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A DRAFT OF A FRAME OF GOVERNMENT

INTRODUCTORY

THE draft here presented is an attempt to bring together in the form of a state constitution some results of the world's experience in popular government which seem likely to be helpful in bringing about fuller control by the people, and greater efficiency in the work of their servants, than we now have. It is a rough draft; that is to say, it does not aim at completeness or finality. It has no particular state in view and is not an amended form of any constitution now existing. Its aim is simply to treat the general problem of the machinery of government in a modern democratic state in a concrete and tangible form.

Such attempts are needed, for one thing, because nearly all the world's progress in the machinery of government for a good part of a century has been made by other nations and along a different line from that which we have followed. The success of our forefathers in establishing in this country government by the people, and our success in maintaining it, have indeed profoundly influenced the rest of the world. But it is the spirit of democracy that they have followed, not our form of it. We inherited presidential government, with an executive independent of the legislature. Other nations, following England, have developed cabinet government, with an executive dependent upon the legislature and forming a part of it. Since the development of this form, not only monarchies, but republics also, have preferred it to ours. France and Portugal are republics, but both have the cabinet system, and the prime minister, not

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the president, is the real ruler. Even the Chinese, though they seem to value our friendship beyond that of any other nation, are apparently refusing to follow our example. They have a president, but they have also a prime minister; and if this arrangement works in China as it does elsewhere, the prime minister will in the end be the real ruler, and the president a republican copy of the king who reigns but does not govern.

It is of course quite easy and natural for us to suppose that other nations differ from us because they are less advanced, and that they will grow more like us when they have made further progress. Their own view is that they are already freer than we, and that under their system they are able to get what they desire with an ease and efficiency unattainable under ours.

The question which of these two systems is superior is, however, purely academic. We believe in the presidential system and have no mind to change it for any other. If they can say that their type of government is more efficient in carrying out the will of the people, we can reply that ours has greater steadiness, is not subject to such violent changes, does not cultivate such extreme partisanship, and is not dependent for its efficiency, as cabinet government seems to be, on a nearly equal division of the people between opposing principles. But the important question is, not which system has more excellences, but whether it is not possible to combine the excellences of both.

If that be the question, we shall do well to begin by asking what part of our system it is that other nations consider inferior to theirs. And the answer is clear. They respect our presidency and our courts, and they find our weak point in the legislature. Now this is precisely our own view, and it is maintained by us even more emphatically, if possible, than by them. Not many of us, perhaps, are sufficiently interested in foreign parliaments to have formed any very decided judgment as to their merits compared with those of Congress. But most Americans would agree that Congress is not as successful an institution as the presidency. We take it, as we do the weather, as the best we can get; but we seldom feel any enthusiasm over it while it is in session and are apt to have a mixed feeling of disappointment and relief when the session ends.

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Towards the state legislatures, however, our attitude is different. These are not, like Congress, beyond our reach, and we express our opinion of them very authoritatively and plainly in numerous attempts to deal with them in the state constitutions. The text of these changing constitutions fills nearly four thousand large pages, and most of their provisions deal directly or indirectly with the legislatures. Yet there is little serious attempt to improve these bodies. They are treated as if they were incurably bad, and amendments aim chiefly to supply what we despair of obtaining from the legislatures, and to neutralize or prevent the evil they are expected to do. Our constitutions are filled with such manifold prohibitions upon the legislature as to remind us of the nursemaid who said: "Go and see what Johnny is doing, and tell him not to." They command the doing of things that a legislature ought to do without being told, and they include much important legislation that the people refuse to entrust to their representatives at all. To guard ourselves still further against the mischiefs with which the legislatures threaten us, we limit the length and diminish the frequency of their sessions. Our most ardent reformers, arguing for the initiative and the referendum (not bad things to have in case of need), tell us that without these really popular government is unattainable. And finally, the legislatures themselves justify this distrust by pouring out vast floods of laws, most of them badly drawn and many of them useless or mischievous, condemning their predecessors by hundreds of amendments to existing laws, and themselves by furnishing to their successors similar occasions for amendment.

A chief cause of our persistence in keeping what we condemn is the failure to give practical recognition to the fact that legislation is a complex process, the different parts of which call for different qualifications in those who deal with them. There is first an end to be aimed at: protection against contagious disease, for instance, or control of corporations. There is next the determination of the means by which this end is to be accomplished; and here of course knowledge and skill are required, more in some matters than in others, but on the whole the most comprehensive knowledge and the greatest skill avail-

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able. There is thirdly the drafting of a bill to prescribe effectively the use of the means determined upon; and skilled draftsmanship is always and everywhere rare. Then comes the fourth and final stage, the acceptance or rejection of what has been thus prepared. It is only in this last stage that a legislature necessarily deals with a bill at all, and it is only in this stage that it can act in its corporate capacity. Its corporate language consists only of the two words Ay and No. And even these it can use only when there is a question before it, which some individual has presented in the form of a motion.

To vote, moreover, is the only constitutional duty of any individual legislator. Some members must do more, as things are now, or nothing at all will be accomplished, but the duty of doing more is a prescription of conscience, not of the constitution. The constitutional duty is also the only one for which a member of the legislature is ordinarily fitted. It is absurd to expect him to be a skilled legal draftsman, or to have a comprehensive knowledge of the world's experience in legislation on even one subject. The voters, morever, do not want experts, even if they could get them, but representatives. They elect men for party reasons, or because they will support some particular measure, or because they are believed to be honest, are personally popular and reflect fairly well the average opinion and desire of the electors. And on the whole this attitude is reasonable. To vote with care and intelligence in accordance with the sober judgment of the constituents is a legislator's proper function, and one of the highest importance. It is essentially judicial, but is of a higher dignity than that of the judges of the courts; for these determine only what the law is, while the legislators decide what it shall be. To expect them to perform also the technical work required in framing laws is very much as if we should abolish the office of district attorney and leave the conduct of the government's case to volunteers in the jury box. That there is always an abundance of legislators who are more than ready to undertake the needed technical work, and even an occasional one who does it fairly well, is no justification of the system.

Without concentrated responsibility for the framing of laws,

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then, we cannot expect good legislation. The legislatures have done their best. They have worked out a committee system which to some degree concentrates responsibility and makes use of such special knowledge and skill as happen to be available among the members; but this system fails to give us well considered and well framed laws. And it has substituted secret action in committees for public action in deliberative assembly, thereby opening countless avenues of approach for corrupt influences, and closing the door to effective supervision by the people, who do not and can not know what is being done.

There remains only one way in which concentrated responsibility for framing legislation can be had without a radical change in our form of government, and that is by putting this responsibility in the hands of the chief magistrate. This would take away no right which the legislatures now have. It would only set them free from a responsibility to which they have been clearly proved unequal, and make it possible for them to concentrate effectually, as they cannot now, upon their essential task of judgment. For this their committee system, ineffective and dangerous as now chiefly used, would be an admirable aid.

The framers of our national Constitution saw clearly the need for that centralized responsibility for framing legislation which we now lack, and although the need was much less pressing in those simpler times than in our own, took pains to supply it. They put into the Constitution the clause which provides that the president "shall recommend to their [Congress's] consideration such measures as he shall judge necessary and expedient." This clause was prepared with great care. In the revisions which it underwent, "may" was changed to "shall," and "expedient" added to "necessary," thus widening its scope to cover the whole field of legislation. "Measure," in the *Encyclopædic Dictionary*, is rightly defined as "means to an end," and further as "a law, a statute, an act of Congress"; and this clause laid upon the president the duty, placed upon no one else, of framing bills for action by Congress. Gouverneur Morris, in reporting from the committee that had it in charge, explained that it was intended "to make it the duty of the president to recommend, and hence prevent umbrage or cavil

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at his doing it"; and the clause was accepted *nem. con.* Morris practically said the same thing in another form, also without contradiction, when he declared that the president was the prime minister, and not the king, the people being the king; for the well recognized function of a prime minister in relation to Parliament was and is to lay bills before them.

This clause, if it had been observed according to its intention, might easily have changed the whole course of constitutional history, and given us a very different position in the development of popular government throughout the world, making us leaders where now we lag. It provided just that element which makes cabinet government not only more efficient than ours, but more democratic also. For under this form of government public attention is concentrated on the important matters of legislation brought forward by the prime minister and his cabinet, and these are thoroughly debated in open Parliament, so that the people can know what is being done, and can place responsibility for it where it belongs, to a degree now quite beyond our reach.

Why then was this principle of efficient democracy allowed to become inoperative? For at least four reasons. One was the tendency of the legislatures to absorb all power into themselves. This was much discussed in the Convention, but, as the event proved, not sufficiently guarded against in the Constitution. Another, greatly strengthening the first, was the general fear of the one-man power, natural, if not inevitable, under the circumstances. For the people had had their own experience with George III, and could not possibly foresee that the presidency would become the most powerful office in the world, and yet more truly representative of the people than any legislature. If this fear was so strong even in the Constitutional Convention as to threaten to give us a board of directors instead of a president, it is not surprising that it was strong among the rest of the people. A third reason was a widely accepted theory of the "separation of powers," borrowed, not too intelligently, from Montesquieu, who based it on his observation of the government of England during the earlier half of the eighteenth century. This theory is not recognized in the Constitution, except in so far as the assignment of certain duties to

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certain persons impliedly denies these to persons to whom they are not assigned, while in the Convention it was unceremoniously brushed aside by James Wilson, perhaps the most far-seeing of all the members. "The separation of departments," he said, "does not require that they should have separate objects, but that they should act separately on the same objects." He also cited the analogy of the two branches of the legislature, which must also be "separate and distinct," though they are both to "act directly on the same object." And there was no dissent from his statement. The theory continued powerful, none the less, and was made much use of in attempts to prevent the adoption of the Constitution. Even now, in spite of the Constitution, and in spite of the wonderful spread of popular government under the cabinet system, with its union of both executive and legislative leadership in one man, there are still intelligent people who believe that somehow liberty depends upon keeping the executive apart from matters of legislation, and that this idea is the very inner "genius" of our institutions.

The final and clinching reason why the clause which conferred legislative leadership on the president never became fully operative was that Washington, for reasons peculiar to the beginning of the new government, did not exercize the power which it conferred. It was the first subject that he took up in his first address to Congress, and though recognizing "the duty" he felt excused from undertaking it, because of the "circumstances" under which they met, his own want of "lights derived from official opportunities," and "the talents, the rectitude, and the patriotism" of the members of Congress, many of whom were among the framers of the Constitution which they were then inaugurating.

But the constitutional duty laid upon the president still stands, and so does the constitutional principle that the grant of a power carries with it the necessary means of exercizing that power. They only wait the mandate of the people to put them into effect. At any time now, I believe, if a strong president who had the confidence of the people were deliberately and with sufficient warning to declare his intention of openly and officially laying bills before Congress, and to demand, as part

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of the necessary means of carrying out his constitutional duty, the right to attend their sessions and defend what he had proposed, the people would support him in it, and Congress, no doubt reluctantly at first, would yield. To appear personally or by deputy before Congress would be only to do what Washington did, both in person and through General Knox as his representative.

Once this return to the first principles of the Constitution had been effected, a new and better day in American government would dawn. Legislation then could be treated as a whole, the widest knowledge and the highest skill could be brought to bear upon the preparation of laws, bills could be properly and authoritatively drawn, and would be little exposed to needless, careless or hostile amendment, for the whole process would be brought out into the light, where the people could see and judge and rule. Congress too, no longer choked by its own greed of power, would be freer and stronger; its members, brought face to face with the president and his cabinet in the presence of the people, would have opportunities of distinction and leadership which are now out of their reach; and the rule of reason would succeed to the rule of private influence. We should then have in reality, what we now have only in our own imagination, the most truly republican government in the world, and one combining the efficiency of the cabinet system with the greater steadiness and calmer reasonableness of our own.

In state government the procedure must of course be different. The state constitutions have no such provision as that which makes it the duty of the president to propose legislation. But it can be put into them if the people want it, and in such form that the legislature will be forced to vote Yes or No on what the governor proposes, with no such opportunity as now exists, by "perfecting amendments" and other devices, to destroy a measure under the guise of supporting it.

There seems every hope that this may be accomplished. Even now the people are more and more looking to their governors, as to their presidents, to compel the legislatures to give what, without this compulsion, they are unwilling or unable to give. We are getting very tired of a form of self-government

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without the substance, of having legislation done in the dark by committees easily approachable by private interests but out of reach of the people at large, of deadlocks between the houses, of the general inability to do any thing well and the general tendency to put quantity of legislation in the place of quality, and of the impossibility of fixing responsibility for what is done or left undone. We are very nearly ready to insist on concentrated reponsibility in the business of the state, and when we are quite ready we can have it.

This principle of centralized responsibility applies not only to the relation between executive and legislature, but also to that between the two houses of the legislature itself. The negative that each has upon the other was intended to prevent evil; but it has been a fertile cause of evil and preventive of good. There is nothing in our government that more completely combines power with irresponsibility to the people and openness to corrupting influences than the committee of conference between the two houses, necessary because of their mutual negative, and dangerous because its reports, from the nature of the case, are not open to amendment. The only way of escape from this, and from the general confusion that comes from assigning practically the same work to two separate and similar bodies, is either to abolish the Senate, or to do away with the mutual negative and differentiate the functions of the houses.

But to abolish Senates would be to give up the purpose for which these are maintained, the amendment or prevention of hasty or badly framed legislation. As they are, indeed, they accomplish this very imperfectly. But several countries of Europe have shown us how to keep the restraining influence of a Senate without giving it an absolute negative, by having differences between the houses settled in joint session. As to differentiation of functions, the very nature of a Senate would seem to require that it should be, what the House of Representatives cannot be, a body of legislative experts, with a moderate check upon the other house so far as voting power is concerned, but with every opportunity to aid it by knowledge and to influence it by reason.

Confusion and inefficiency are not confined to our machinery

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for the making of law. They extend also to its enforcement. Good laws will be of little avail if left, as now, to particular localities to enforce or annul them as they will. The state should enforce its own laws. The principle of concentrated responsibility is as much needed here as in the other department. We are already beginning to realize the futility of leaving to localities certain things for which, even if willing, they are incompetent; but the remedies we have adopted have made confusion worse confounded. Besides the local police, we now have state police, factory inspectors, sanitary inspectors, and the like, all exercizing police power for certain purposes, often very ineffectually, because their work is done by occasional visits only. This not only brings confusion and waste of power, but tends to create unfortunate distinctions between different kinds of law-breaking, making small theft, for instance, disgraceful, but the taking of life by propagating disease, or the destruction of health by bad industrial conditions, venial if not respectable. The only practical remedy is to put all police power in the governor's hands, that all law-enforcing agencies may be coördinated, and work together to insure respect and obedience for all law.

Upon all the suggestions made in this draft it is impossible to dwell. I pass now to a brief summary of its chief features, arranged for convenience according to the purpose they are intended chiefly to serve, beginning with those which aim at more effective control by the people, and passing on in order to those which have to do with the three departments of the government.

As to the people's control, one naturally comes first to the much discussed initiative and referendum. These are plainly not necessary to government by the people, since the most democratic countries in the world, England and her self-governing colonies, neither have them nor seem to feel the need of them. But we do, as matters stand, and they are therefore included here, though in the belief that with a properly organized government their function would be merely that of an emergency remedy for possible evils. The recall is not included, in its ordinary form; for the number of elective officers is reduced to a minimum—a governor, and a representative for each district—and the principle of the recall is otherwise applied to the gov-

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ernor, while the shortness of the representatives' term seems to make it needless. The right of the local subdivisions of the state to establish their own form of government (article IV, section 1) includes the right to provide for the recall of local officers. Greater freedom of election is provided for by the removal of restrictions as to age, residence *etc.* (IV, 2), by giving more independence in local government (IV, 1), and by prescribing that the name of the occupant of an office shall always be upon the official ballot, so that the people may be able to retain a faithful servant without the permission of party machines. This last provision would greatly promote efficiency, for officials could then work for reëlection by attending to the duties of their office, instead of neglecting them to secure renomination (IV, 3). Putting the principles of a civil-service law into the constitution, and providing an easy referendum against the removal of offices from its operation, would also strengthen popular control (I, 14). Better knowledge by the people of what their servants are doing or proposing to do will likewise increase their power over them. To this end provision is made for the publication of the governor's proposals for legislation a month or more before the legislature meets (II, 6), and for a division of the legislative session into two parts, in the first of which bills shall be presented but not finally passed, this to be followed by a recess which will give time for the representatives and the people to consider what is proposed (I, 6). This last provision is made to apply also to constitutional conventions (IV, 4). A right on the part of the governor to appear before the legislature in support of what he proposes, and on the part of the legislature to interrogate him publicly as to his administration, and to keep constant watch on it by means of a standing committee, together with frequent publication of abstracts of the laws, will also increase the people's power by increasing their knowledge (II, 8; I, 10; I, 5).

As to the legislature, the chief aim is to reconstitute the Senate so as to make it an efficient body of legislative experts, with full opportunity to make good use of their knowledge and skill. It is proposed to attempt this by making it a small body; by requiring its members to give their whole time to the study and

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practice of legislation; by having them act as a legislative council to the governor; by giving them a right to send any of their members to take part in the debates of the House of Representatives, and by having differences between the two houses determined in joint session; by giving them a term of six years, with pension rights at the end of two terms; and by having them elected by the House of Representatives (which would naturally elect them chiefly from among its own members and would be best able to judge of their legislative knowledge and skill), but with a check upon too great partisanship in their selection (I, 4, 5, 8). Such a Senate should be sufficiently powerful, and little disposed to evil or open to corrupt influences; and the legislature as a whole should be more powerful for good and less for evil than now.

In the executive department it is proposed to place upon the governor the duty to propose legislation, including a budget, to give him the right to appear publicly in the legislature in defence of his proposals, and to compel it to vote Yes or No on these without amendment except by his consent. This last provision would not prevent the legislature from voting down his proposals, and then substituting others differing as much or as little as they pleased; but this would have to be done openly, after both had publicly stated their case, and could not easily be done without good reason shown. It is proposed also to make the governor in reality what he is in name, the executive, and to make it possible for him to execute the laws by putting under his control all police forces (II, 4), and also all prisons and houses of detention (II, 13). For efficient administration he should have the appointment of the heads of administrative departments, who would form his executive council (II, 12). To secure efficiency in the proposing of legislation, he should not only have the aid of the Senate as a legislative council, but one or more official draftsmen under his own direct control to aid him in putting his proposals into form. It would greatly simplify the work of legislation if the governor were also given authority to put forth administrative regulations to give effect to laws. This, by doing away with the necessity of anticipating every possible case in advance, would also tend

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strongly to do away with the extreme complication and ambiguity of much of our statute law. The principle of administrative regulation is already fully recognized in the numerous commissions to which we now give a similar power. More concentration of this power would be safer, and would tend to better administration. It is true that in some European countries the practice tends to bureaucratic tyranny, but this would be sufficiently guarded against by giving the House of Representatives power to repeal administrative regulations (II, 10). With such increase of duties and powers in the governor, it would seem wise to take from him the pardoning power, which is judicial rather than administrative in character. The executive has it with us because the king had it. He was "the fountain of justice," and such judicial power as he did not delegate to his judges he naturally retained. The power should be exercized in close touch with prison discipline (III, 5). A governor who is to perform such functions as it is here proposed to devolve upon him should have the highest qualifications possible to obtain, and if proved worthy should be kept in office as long as possible. The governorship should not be a stepping-stone to anything short of the presidency. The term is therefore put tentatively at ten years, with power of recall by each legislature at the end of its first session, when they would know him by actual test and be less likely to propose recall for merely partisan reasons (II, 2). But the rule to have the name of the occupant of an office on the official ballot would make the prescribed length of the governor's term of minor consequence. It could be as long or as short as the people chose to make it.

The principal aim of the article on the judiciary is to make possible the removal of judges without destroying their independence of judgment. This may be fairly safeguarded, it would seem, if the right to a pension were recognized (except in cases of great unfitness or misconduct), and if forced retirement on pension were made tolerably easy, leaving more serious cases to be dealt with by impeachment or summary removal (III, 3, 4). This subject needs more careful working out than I have here been able to give it, but the underlying principle seems sound.

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There is not much originality in these suggestions. For the most part they are based on actual practice somewhere. The idea of the publication of the governor's proposals in advance of the session of the legislature came from Japan; that of the division of the legislative session into two parts from California; that of the election of the Senate by the House of Representatives from Norway and from the New Hampshire constitution of 1776; that of the functions of the standing committee of the House of Representatives from the finance commission of the Boston city government and from the office of censor in China and elsewhere.

A FRAME OF GOVERNMENT

Article I. The Legislature

1. All the legislative power of the State, except as otherwise provided in this Constitution, shall be vested in a Legislature, to consist of a House of Representatives and a Senate. The people nevertheless reserve to themselves the right to call at any time a Convention for the amendment of the Constitution, and the power to propose laws and amendments to the Constitution, to enact or reject the same at the polls, and to approve or reject at the polls any act, or any part of any act, of the Legislature. The manner of exercise of these powers shall be determined by law, provided always that the submission of such questions to the vote of the people shall never require more than one-sixth of all the registered voters of the state, nor their determination more than a majority of the same.

2. The House of Representatives shall consist of as many members, not to exceed [sixty] in number, as shall be by law appointed, to be elected by districts for a term of two years. The several districts shall be substantially equal in population and as nearly similar in shape as practicable.

3. The Legislature shall meet annually on a date to be determined by resolution of the House of Representatives. Special sessions may be called by the Governor, by a vote of two-thirds of the elected members of the House taken at a regular session, or, if six months have elapsed since the close of the last preceding session, by its Standing Committee.

4. The Senate shall consist of [nine] members, elected by the House of Representatives, in such manner that the term of [three] of them shall expire every two years, and that no more than [five] of them shall at the time of election be of any one political party.

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Every Senator who, after a service of twelve years, shall fail of re-election, shall be entitled to a pension for life, which shall never be less than half of the salary to which he was entitled during his last year of service.

A retired Senator receiving a pension shall be eligible to any state or local office. If a salary be attached to such office, and the sum of the salary and the pension exceed twice the amount of the pension, the pension shall be suspended, while he holds the office, to the extent of such excess.

5. Senators shall devote themselves exclusively to the duties of their office. When the House of Representatives is in session they shall not adjourn for more than three days at a time. When it is not in session they shall give themselves, either in full assembly or by division of labor, to the study of the principles and practice of legislation, both in this and in other countries. They shall have the right at any time to send to the House of Representatives deputations of their members, who shall have equal right with the members of that House to be heard upon bills pending therein, and to offer amendments, but not to vote. The Senate may present proposals for legislation either to the Governor or to the House of Representatives, and may be called on by either for information or advice, which they shall be free to present either in writing or by deputation from among their members. They shall act as a Legislative Council to the Governor when he shall summon them for this purpose, but shall have power to decline while the Legislature is in session. At any time when the Governor shall so request, they shall put into form for presentation to the House of Representatives such proposals for legislation as he may desire to make. They shall publish annually for distribution among the citizens brief abstracts of such laws as bear upon the duties and responsibilities of the people.

6. The regular session of the Legislature shall be divided into two parts, between which thirty days shall intervene. In the first part bills shall be received and discussed, but no bill shall be passed then, nor any bill introduced in the second part of the session passed at all, except by an absolute majority of the two Houses, with the approval of the Governor. During the interval between the two parts of the session it shall be the duty of the members to devote themselves to the consideration of the bills laid before them with the same diligence as if the Legislature were in session, and this duty shall be taken account of in fixing their compensation. Copies of any or all such bills shall be sent by the Secretary of State, or other officer designated by law, to any citizen, whether or not a legal voter, who shall make written request therefor.

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An absolute majority shall for the purposes of this Constitution be taken to mean a majority of the full membership as established by law.

7. Every bill passed by the House of Representatives, except bills originating in the Senate and accepted without amendment and appropriation bills presented by the Governor, shall be sent to the Senate, who, if they approve it, shall send it to the Governor for his approval, but if not, shall return it to the House of Representatives with such criticisms, objections or amendments as to them shall seem good. A bill not returned by the Senate within fifteen days may be sent by the House of Representatives to the Governor without the approval of the Senate. No bill shall be finally passed, whether in the separate Houses or in joint session, without an absolute majority, appropriation bills only excepted.

8. When the House of Representatives shall desire to reconsider a bill not approved by the Senate, they shall summon them to a joint session, in which the bill shall receive its final consideration. Joint sessions shall be held under the rules of the House of Representatives, its Speaker presiding, and members of the two Houses having equal rights.

9. Every bill originating in the Legislature, before it become a law, shall, except as otherwise provided in this Constitution, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated. If it shall then be passed again in its original form by a vote of two-thirds of each House, or as amended by the Governor by a majority vote of the two Houses in joint session, it shall be a law.

If any bill shall not be returned by the Governor within fifteen days it shall be a law, unless the adjournment of the House of Representatives prevent its return, in which case it shall not be a law unless the Governor within fifteen days after the adjournment shall so proclaim it.

But no bill affecting particular individuals only shall become law without the approval of the Senate and the Governor.

10. The House of Representatives shall require the presence of the Governor for the purpose of putting to him such questions as may have been authorized by not less than one-fourth of the elected members, provided that notice of the questions shall have been given to him at least one week in advance, that his attendance shall not be required for more than three hours in any one week, or one hour in any one day, and that the particular days and hours of his attendance shall be at his discretion. All other executive officers of the state may be summoned and questioned at any time by the House, or by any Committee upon which the House shall confer such authority.

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11. Before the end of each session the House of Representatives shall call the Senate to a joint session, in which appropriations shall be made for the expenses of the two Houses for the next session, each House having a veto on the appropriations for the other. But every new Legislature in its first session shall be entitled to an appropriation not less than that of the preceding Legislature in its last session. These appropriations, except in the case of increase in the salaries of the members of the Legislature, shall not require the approval of the Governor, nor shall his warrant be required for the disbursement of moneys thus appropriated.

12. The House of Representatives shall elect or provide for the appointment of a Treasurer and an Auditor. The Treasurer shall be the custodian of all state funds, and make payments from the same upon the warrant of the Governor, or as otherwise provided in this Constitution. The Auditor shall examine and pass upon the accounts of all officers of the State, shall have access at any time, in person or by deputy, to all books, papers and accounts having to do with the expenditure of public moneys, or with the sale or other disposal of public property, shall have the right to examine and interrogate at any time any person officially charged, directly or indirectly, with the expenditure of money, and for this purpose may summon before him any such person, except the Governor and the judges of the Supreme Court. Both Treasurer and Auditor, with their subordinates, shall be responsible for their official acts to the House of Representatives, and when that House is not in session to its Standing Committee, which shall have the right to suspend them from office, and to indict them before the Courts on any matter connected with the performance of their official duties.

13. The House of Representatives shall appoint a Standing Committee of not more than [five] of its members, who shall receive the same salary as Senators, and shall exercize, when the House is not in session, such powers as may be delegated to them. It shall be the duty of this Committee to examine and report upon the working of the executive and judicial departments of the government. They shall have the right to examine all books, papers and documents of these departments, to interrogate publicly or privately all officers of the State, to summon before them for this purpose any such officers except the Governor and the judges of the Supreme Court, and to make to any of them such recommendations as to the performance of their official duties as they may deem proper.

14. It shall be the duty of the Legislature to enact for the regulation

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of the civil and military service laws to secure competency in persons appointed to office therein, prevent appointment for personal or partisan reasons, and guard against removal except for sufficient cause. Such laws shall apply to all appointed officers and employees of the State, with the exception of the Governor's Executive Council, the State Treasurer, the Auditor, and such others as shall be exempted by law with the consent of the Senate and the Governor. The consent of a majority of the registered voters of the State to any proposed exemption shall also be required whenever any five hundred of them shall by petition to the Governor call for a popular vote thereupon.

Article II. The Executive

1. There shall be a supreme executive magistrate, who shall be styled Governor.

2. The term of office of the Governor shall be [ten] years, but each House of Representatives at the end of its first session shall have power, by a vote of two-thirds of its full membership, to order a new election. If the Governor is then reëlected, such election shall be only for the remainder of his original term.

3. The election of the Governor shall be by a plurality of the votes cast, or in case more than one candidate shall receive the highest number of votes, then by the House of Representatives from among such candidates.

4. It shall be the duty of the Governor to execute the laws, and to this end he shall have full command of all police forces within the State. He shall also be commander-in-chief of all the military and naval forces, except when they shall be called into the service of the United States, and may call out such forces for exercise and instruction, to repel invasion, to suppress insurrection, and to execute the laws whenever he shall find the police power inadequate.

5. He shall from time to time give to the House of Representatives information of the condition of the State and its affairs, and shall recommend to their consideration such measures of legislation as he shall judge expedient.

6. Thirty days at least before the assembly of the House of Representatives, and as much earlier as shall be reasonably practicable, the Governor shall publish any bills or proposals for legislation which he shall have prepared, and cause copies thereof to be sent to the various localities for distribution among the people. It shall be the duty of the House of Representatives to appropriate the money necessary for this purpose. In the absence of such appropriation the Governor

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may draw from funds in the treasury such amount as he may deem needful therefor. Proposals thus published, unless he shall desire to withdraw them, shall be laid before both Houses of the Legislature within the first three days of their session, with such amendments as he may in the meantime have thought good to make. Bills so published and laid before the Legislature shall not be subject to amendment without his consent, and if not rejected by either House before the end of the session, shall become law if he within fifteen days thereafter shall so proclaim them.

7. The Governor shall prepare annually a budget, containing a statement of the receipts and expenditures of the previous year, with an estimate in full detail of the amounts required for all the liabilities and proposed expenditures of the year next ensuing, and of the sources from which it is proposed to derive the needed revenue. This budget he shall publish as provided in the preceding section, and lay before the House of Representatives for their approval, with such alterations and amendments as he may in the meantime have thought good to make. The House of Representatives may, by an absolute majority, expunge any item of the proposed expenditure, or diminish the amount thereof, but they shall have no authority to increase the amount of any item, nor at any time to authorize any expenditure not proposed by the Governor, except as provided for in this Constitution. All items of expenditure in the budget not rejected as here provided before the end of the session shall be deemed approved. But no grant of money or other valuable thing to individuals or corporations shall be made except by a two-thirds vote of the House of Representatives, with the consent of the Senate.

8. The Governor shall have the right to appear at any time, in person or by deputy, in the House of Representatives or in the joint session of the two Houses, in explanation or defence of any proposal which he shall have made or may desire to make to them; provided, however, that no more than three hours of any week shall be thus occupied, except by their consent.

9. The Governor may appoint one or more official draftsmen, to aid him in the drafting of laws, with such assistants as may be needed. The draftsmen and their assistants shall have such qualifications, and be given such remuneration, as shall be determined by law.

10. The Governor, with the advice and consent of the Senate, may make and publish administrative regulations for the effective carrying out of the provisions of the laws. Such regulations shall be subject to repeal at any time by an absolute majority of the House of Representatives.

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11. The Governor shall have the right to meet with the Governors of other states in consultation about matters of common concern, and it shall be the duty of the House of Representatives to make proper appropriations of money for the expenses of such meetings.

12. The Governor shall appoint the heads of all departments of the administration, who shall constitute his Executive Council. These shall include [a Secretary of State, an Attorney General, a Commissioner of Police, a Commissioner of Prisons, a Commissioner of Education, a Commissioner of Industries and Commerce], and such other officers as may be by law determined. All administrative officers of the State except the Treasurer and Auditor and their subordinates, and officials and employees of the legislative and judicial departments, shall be under the control of the Governor and responsible to him.

13. All prisons and houses of detention shall be maintained by the State, and be under the control of the Governor, who shall take care that prisons be conducted for the benefit and reformation of the prisoners and the protection and welfare of the State. The labor of the prisoners, under such conditions as may be determined by law, shall he made use of for the benefit, in due proportion, of the State, the prisoners themselves, and those by law dependent upon them.

Article III. The Judiciary

1. The judicial power of the State shall be vested in one Supreme Court, and in such inferior courts as may be established by law.

2. All judges shall be appointed by the Governor, with the advice and consent (except in the case of justices of the peace) of the Senate.

3. Any judge may be retired at any time by a two-thirds vote of the elected members of the House of Representatives, with the consent of the Senate. Any judge who shall have passed the age of seventy-five, or be physically or mentally disabled, may be retired by the Senate on the recommendation of the Standing Committee of the House of Representatives. Judges of the inferior courts may be retired by the Supreme Court for incompetence or lack of judicial impartiality. Every judge retired, as provided in this section, after five years' continuous service, except it be for lack of judicial impartiality, shall be entitled to a pension for life, which shall never be less than half the salary to which he was entitled at the time of retirement.

4. Judges of the Supreme Court shall be subject to impeachment by the House of Representatives before the Senate. The Chief Justice shall preside over the trial, but without the right to vote, or if the Chief Justice be himself impeached, then the senior justice of the Supreme

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Court. Judges of the inferior courts shall be subject to impeachment before the Supreme Court by the Standing Committee of the House of Representatives for any malfeasance in office. Judgment in this case shall not extend further than to removal from office, but shall leave the person convicted liable to indictment, trial, judgment and punishment according to law.

5. There shall be a Board of Pardons, of which the Commissioner of Prisons, or some other officer of the prison administration designated by the Governor, shall be the president. The other members shall be a judge appointed by the Chief Justice, and a Senator elected by the Senate, both of whom shall hold office for two years, and as much longer as the appointing power may see fit to continue them therein. The Board shall have full power of pardon, reprieve, and commutation of sentence, and in the exercise thereof shall pay due regard to the principles set forth in Article II, Section 13 of this Constitution.

Article IV. Miscellaneous Provisions

1. Every town, city, or other self-governing subdivision of the State shall have the right to establish and amend its own form of government. But it shall be the duty of the Legislature to see that such form be government by the people, either directly or through elected representatives. The liberty herein granted may be limited by general laws, provided that every such law shall require for its passage the assent of two-thirds of both the House of Representatives and the Senate.

The franchise in local government shall not be denied to any person having the franchise in state government.

Nothing in this section shall be so construed as to limit the right of the legislature to establish by general laws the limits and methods of taxation, expenditure and debt for local purposes, to prescribe methods of accounting, and to provide for examination and report upon local government and finance.

2. No restriction shall be placed by law upon the election by the people of persons for public employment, except in case of disqualification for office by reason of malfeasance or crime.

3. In all elections to office the person who at the time holds the office shall be considered a candidate, and if there is an official ballot his name shall appear upon it, unless he shall by a written statement addressed to the person or persons having authority to prepare such ballot withdraw his name, or shall have been convicted of crime, or judicially determined to be of unsound mind. If there be a primary

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election open to all voters without distinction, his name shall be similarly placed upon the ballot in that election, and if he shall receive therein a plurality of votes, he shall be considered as elected, and no further election for that office be held.

4. Amendments to this Constitution may be proposed by an absolute majority of the two Houses of the Legislature, or by a two-thirds vote of the elected members of either House. But all proposals for amendment must be submitted to the Governor for criticism and suggestion, and all offered by one House alone submitted to the other House, before final action.

The question of calling a Convention for the revision of the Constitution may be submitted to the vote of the people at any time by an absolute majority of the two Houses of the Legislature, and shall be submitted every tenth year. If a majority of those voting upon the question vote affirmatively, delegates to the Convention shall be elected by districts in the same manner as Representatives to the Legislature, at the next election for such Representatives, if that shall be not more than a year distant, otherwise at some earlier time determined by law, or in the absence of such law by proclamation of the Governor. The Convention so elected shall assemble at the State Capitol, or other place designated by law, on the [ninety-first day [1]] after election.

All amendments proposed in accordance with these provisions shall be submitted to the vote of the people at such time as may be named in the proposals, or if no time is there named, at the next general election.

The session of the Convention shall be divided into two parts, between which at least thirty days shall intervene, and no final action on any suggested amendment shall be taken during the first part. The provisions of Article I, Section 6 as to the duties of members of the House of Representatives during the recess, and as to the publication of bills under consideration by them, shall apply also to the members of the Convention and to amendments under consideration by them.

A Constitutional Convention may submit its proposals as a whole, or in such divisions as it may determine.

Amendments shall go into effect when they shall have been accepted by a majority of those voting upon the question.

THEODOSIUS STEVENS TYNG.

ASHLAND, NEW HAMPSHIRE.

[1] Thirteen weeks.

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SEPARATION OF POWERS: ADMINISTRATIVE EXERCISE OF LEGISLATIVE AND JUDICIAL POWER

I. THE DELEGATION OF POWER TO ACT

1. *Constitutional aspects of the problem*

THE constitutions of our state and federal governments betray in many ways the apprehension of undue aggression on the part of executive and administrative authorities. The English theory that the residuary powers of government are vested in the crown finds no counterpart in our public law. Nor were the framers of our various constitutions content with the general principle that the executive has only those powers specifically enumerated. Executive action is limited, not only by clauses requiring the concurrence of other departments of government, the so-called checks and balances, but by express provisions that the executive authority shall not exercize the powers belonging to the other branches. This so-called distributing clause,[1] which appears in most of our state constitutions, is to be inferred also in the federal Constitution, where the political theory known as the separation of powers becomes through judicial decision a rule of law. The Supreme Court has asserted that all the powers of government, whether state or national, are divided into three grand departments, and that "as a general rule, the powers confided by the Constitution to one of these departments cannot be exercized by another."[2] Hence the exercise of any authority by the executive, even by reason of express delegation from the legislature, may be questioned and condemned in judicial proceedings, on the ground that the power sought to be conferred or exercized is not in its nature executive, but belongs more properly to the legislative or judicial department.

Furthermore, the federal Constitution by its fifth and fourteenth amendments provides that no person shall be deprived

[1] For an example of such a clause, *cf. infra*, p. 218, note.

[2] Kilbourne *v.* Thompson, 13 Otto, 168 (1880).

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of life, liberty or property, either by the national or by the state governments, without due process of law. And the development of our constitutional law has resulted in the exercise by the federal Supreme Court of the ultimate power to determine what is "due process." Similar clauses in state constitutions vest in the state courts the power to declare the action of state administrative authorities wanting in due process within the meaning of the state constitution, even where such action is not regarded by the federal courts as prohibited by the due-process clause of the fourteenth amendment. So that the legality of any executive action and of any interference with person or property may always be challenged in judicial proceedings, and depends, in last analysis, upon its conformity to a rule of law laid down by the courts.

The question of the validity of executive and administrative action thus presents itself in a twofold aspect: Is it an exercise of power by a department of government to which such power may not legally be confided? Is it a denial to the individual of due process of law?

With respect to state action, the state court is the final judge of the question whether the action of the executive authority is improper as a violation of the distributing clause. In Consolidated Rendering Company *v.* Vermont,[1] where it was urged that a state statute which gave to tribunals or commissions other than courts the power to compel the production of books and papers was a violation of the fourteenth amendment as an attempt to confer judicial powers on non-judicial authorities, the Supreme Court answered brusquely, without citation of authority: "There is no provision in the federal Constitution which directly or impliedly prohibits a state, under its own laws, from conferring upon non-judicial bodies certain functions that may be called judicial."[2] But this statement must be

[1] 207 U. S. 541 (1908).

[2] *Cf.* Reetz *v.* Michigan, 188 U. S. 505 (1903), where, in reply to the objection that the power vested in a board of medical examiners to determine whether one had been legally registered under a prior statute involved the decision of a legal question, the court asserted that "no provision in the federal Constitution forbids a state from granting to a tribunal, whether called a court or a board of registration, the final determination of a legal question."

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subject to the qualification that it does not apply to the consideration of objections made on the ground that such delegation results in a denial to the individual of due process of law. Where individual rights are not concerned, the state may apportion governmental power as it sees fit. But the contention that executive action is a denial to the individual of due process is, when properly raised, always one on which the federal court must express its opinion. For a state cannot, even by its constitution, escape from the limitations of the fourteenth amendment.[1]

These two aspects thus tend to merge into one. Wherever legislative or judicial action is deemed a necessary preliminary to any interference with private right, executive or administrative action is invalid as wanting in due process under the fifth or the fourteenth amendment. Though the principle of the separation of powers is said to be implied in the federal Constitution, the action of federal authorities is usually questioned under the due-process clause. The acts of state authorities may be questioned by the federal courts under that clause only; but this can make little difference in practical results, for, where the individual is entitled to have any matter committed to the determination of judicial authorities, an administrative interference is wanting in due process. And the question of due process is also raised by the substitution of administrative for legislative action, at least where attempt is made to define what shall constitute a crime. Thus, though the fourteenth amendment does not inhibit the administration from all exercises of power in their nature legislative or judicial, it does inhibit in those cases in which the individual is entitled to legislative or judicial action. And where he is not so entitled, a state court is unlikely to regard the administrative action as an exercise of power committed solely to other departments. So that by proper pleadings an individual must be able to secure under the fourteenth amendment any relief that would be open to him by reason of a violation of the distributing clause. The general

[1] Railroad Company *v.* McClure, 10 Wallace, 511 (1870). New Orleans Gas Light Company *v.* Louisiana Light Company, 115 U. S. 650, at p. 692 (1885).

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problem of administrative action may thus be considered as a question of due process, even though many of the cases are based on an interpretation of the distributing clause. While the requirements of due process seem in theory less drastic than the specific inhibitions of a distributing clause,[1] the distinction is nullified in practice by the liberal attitude of the courts in determining what is an exercise of legislative or judicial power.

The power of an executive or administrative authority to decide questions of law or fact must rest upon some constitutional or statutory provision. Where it is based on a provision of the federal Constitution, the right to act cannot be questioned; but *non constat* that the courts may not review or revise the action taken. A provision in the federal Constitution forbidding such review would be a qualification of the due-process clause. But no such provision exists, and judicial review of executive action is justified by the same reasoning which sustains the exercise of a similar power over legislative enactments. The power to declare statutes unconstitutional enables the courts to nullify any legislative delegation of power to act or any statutory prohibition of judicial review, whether contained in an act of Congress or of a state legislature. And such provisions, even in a state constitution, must measure up to the requirements of the fourteenth amendment.

The decision or order of an executive or administrative authority may affect the individual directly, through its express reference and application to his particular case, or mediately, through the action of some subordinate in enforcing a general

[1] But in Portland *v.* Bangor, 65 Me. 120 (1876), the requirements of due process seem to be deemed even more stringent than those of the distributing clause. A delegation of power to overseers to commit to the workhouse persons found by them to be vagrants, which had previously been sustained under the state constitution in Adeline G. Nott's case, 11 Me. 208 (1834), and in Portland *v.* Bangor, 42 Me. 403 (1856), was held "abrogated by the fourteenth amendment of the federal Constitution."

Article III of the Maine Constitution of 1819 reads as follows: "Sec. 1. The powers of this government shall be divided into three distinct departments, the Legislative, Executive and Judicial. Sec. 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted." Thorpe, Federal and State Constitutions, vol. iii, p. 1651.

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order designed for all future cases that may fall within its scope. A general order, when complained of, will usually be alleged to be legislative in nature, and objection will be directed against the power of the official to take any action whatever, as well as against the specific action taken. Where the officer whose determination is in question deals directly with the individual, his act will more commonly be complained of as judicial in nature. Here the power to act may be conceded, and objection confined to the procedure by which the action is taken or to the fact that an opportunity for judicial review is denied—that the administration attempts to make a final and not merely a preliminary disposition of the rights of the individual.

The courts have been compelled to ascertain the meaning of "due process" without the aid of definitions in any constitution. They have held that it does not require judicial process, even where such proceedings, if authorized, would be entirely proper. The Supreme Court has declared that there are certain matters which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which the legislature may or may not bring within the cognizance of the courts, as it may deem proper.[1] "It is not sufficient to bring such matters under the judicial power, that they involve the exercise of judgment upon law and fact." Whether any given dispute may be settled by administrative rather than judicial authorities depends, rather, upon the nature of the subject matter in controversy.

However perfect the judicial theory that executive and administrative officers cannot exercize legislative or judicial power, the courts have allowed the legislature in numerous instances to delegate to these authorities the power of ascertaining facts upon whose existence depends the operation, suspension or revival of a statute,[2] and the power of filling in the details of a statute[3]—actions admittedly proper for the legislature itself to perform.

[1] Murray's Lessee *v.* Hoboken Land and Improvement Company, 18 Howard, 272 (1855).

[2] Field *v.* Clark, 143 U. S. 649. *Cf. infra*, p. 223, 224.

[3] Buttfield *v.* Stranahan, 192 U. S. 470. *Cf. infra*, p. 225.

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And they have sustained the delegation of power to designate the concrete things described by the statute in general terms,[1] to discover in individual instances whether there has been compliance with the provisions of the statute,[2] or to ascertain the existence of facts on which depend the rights or duties prescribed by statute[3] — functions commonly exercized by the judiciary.

Chief Justice Marshall declared in 1825:

> The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law; but the maker of the law may commit something to the discretion of the other departments, and the precise boundary of this power is a subject of delicate and difficult inquiry, into which a court will not enter unnecessarily.[4]

But such inquiry has been forced upon them wherever possible by every litigant who has felt himself aggrieved by any exercise of admistrative power.

The cases involving these questions come before the courts in various ways: in proceedings directly against an officer seeking to command or to enjoin certain action; in suits for damages; in defences raised in judicial proceedings brought by officers to enforce compliance with their decrees; in defences in criminal proceedings instituted to punish the violation of official orders; or in suits between individuals where the rights of one or both are based on some official action.

The first method of judicial redress, that of commanding or enjoining action, is not available against the chief executive of the United States[5] or his higher subordinates,[6] unless the acts of the latter sought to be enforced or enjoined are ministerial

[1] Union Bridge Company *v.* United States, 204 U. S. 364. *Cf. infra*, pp. 226, 227.

[2] United States *ex rel.* Riverside Oil Company *v.* Hitchcock, 190 U. S. 316. *Cf. infra*, p. 234.

[3] Bong *v.* Campbell Art Company, 214 U. S. 236 (1909). United States *v.* Ju Toy, 198 U. S. 253 (1905).

[4] Wayman *v.* Southard, 10 Wheaton, 1.

[5] Mississippi *v.* Johnson, 4 Wallace, 475 (1866).

[6] Georgia *v.* Stanton, 6 Wallace, 50 (1867).

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in character.[1] By the better authority the rule as to the president is applied by the state courts to proceedings against the governor[2]; though some state courts treat the governor as the federal courts treat the heads of departments,[3] and extend to him immunity from direct interference only when his act is not ministerial. Where the rule of immunity prevails, it extends to boards of which the governor is a member.[4] The basis of the rule seems to be the impropriety of interference with the executive by a coördinate authority. A federal court will issue an injunction against a state board although the governor is a member,[5] or against the governor alone, where his duty is ministerial and is not merely moral but legal.[6] But all inferior officers may be brought to the bar of the ordinary judicial tribunals to answer to the plaints of individuals, though such process directly interfere with contemplated official action.

That no official is above the law is the proudly asserted maxim of our system of constitutional government.[7] And for this reason it is urged by many scholars that in our system of law there is no place for what is called "administrative law." The term as borrowed from the French *droit administratif* is deemed to imply official immunity from the process of the ordinary civil tribunals. It will be clear, however, from the discussion to follow, that in numerous classes of cases the courts grant to officials an immunity from judicial examination of the correctness of their decisions which is withheld from private

[1] Kendall *v.* United States *ex rel.* Stokes, 12 Peters, 524 (1838). But such extraordinary remedies may not be issued against officers of the United States by lower federal courts, outside the District of Columbia, McIntire *v.* Wood, 7 Cranch, 504 (1813), nor by state courts, McClung *v.* Silliman, 6 Wheaton, 598 (1821).

[2] State *v.* Stone, 120 Mo. 428 (1894).

[3] State *v.* Governor, 5 Ohio St. 528 (1856).

[4] Dennett, Petitioner, 32 Me. 508 (1851). People *v.* Morton, 156 N. Y. 136 (1898).

[5] Pennoyer *v.* McConnaughy, 140 U. S. 1 (1891).

[6] Kentucky *v.* Dennison, 24 Howard, 66 (1860), *semble.*

[7] Though the government may not be sued, save by its own consent, suits against its officers will lie, not only for damages, but for the recovery of property, even where they disclaim all personal interest and insist they are holding it solely as agents of the government. United States *v.* Lee, 106 U. S. 196 (1882).

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individuals. No private individual is the ultimate authority to decide questions of fact on which depends the legality of his interference with the rights of others. This position is accorded in many instances to the executive and administrative agents of the government. In so far as this is true, it may be contended with good reason that there is a realm of law in which the decisions are based upon the public character of one of the parties involved, and in which the rules applied differ sufficiently from those which obtain where no official action is in issue to justify us in describing this portion of the law as administrative, in contradistinction to the private law. The basis of this distinction is not immunity from judicial process, but immunity from judicial interference with respect to the official action taken or contemplated.

2. *Power to determine conditions under which a statute is to be operative*

No statute, save one designed to operate only on some immediate and specified subject matter, can be drafted with full foresight of the instances in which its provisions will be applicable and of the possible circumstances which may render its requirements inadvisable. It is therefore often highly expedient to vest in some administrative authority a discretion as to its enforcement. As a matter of political fact, where no individual may claim such enforcement as a private right, such discretion usually exists, for the executive may fail to enforce the law, however mandatory its requirements.[1] But it often happens that the legislature vests this discretion expressly, at the same time setting forth the conditions by which its exercise shall be governed.

This result is attained by the declaration that the application of the statute or of one of its alternative provisions shall be conditioned upon the existence of certain facts, to be ascertained by those to whom its enforcement is entrusted. The propriety of such delegation was established in 1813, when the court sus-

[1] *Cf.* the order of the secretary of the treasury permitting free entry of imports shipped to regions suffering from fire or earthquake. *New York Times*, October 13, 1910.

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tained the power vested in the president to ascertain certain facts, upon whose existence, as announced by his proclamation, would depend the revival of the Non-Intercourse Act.[1] There was no discussion of the point, the opinion stating simply: "We see no sufficient reason why the legislature should not exercise its discretion in reviving the act of March 1st, 1809, either expressly or conditionally, as their judgment should direct."

The question was, however, subjected to thorough analysis in a decision[2] which sustained the power vested in the president to suspend the provisions of the tariff act relating to the to the free introduction of certain articles, for "such time as he shall deem just," when he shall be "satisfied" that foreign governments impose on those articles duties which, in view of their free introduction into the United States, "he shall deem to be reciprocally unequal and unreasonable." The opinion refers to the many statutes since the Brig Aurora decision which vest in the president a large discretion in matters arising out of the execution of statutes relating to trade and commerce, and declares that this practical construction of the Constitution, as given by so many acts of Congress, should not be overruled, unless upon a conviction that such legislation is clearly incompatible with the law of the land. The court concedes that the principle that Congress cannot delegate legislative power to the president is "universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution," but asserts that the statute in question does not "in any real sense" invest the president with the power of legislation. He is said to have no discretion in the premises "except in respect to the duration of the suspension," and this limited discretion is to be exercised merely to enforce the policy established by Congress.

As the suspension was absolutely required when the President ascertained the existence of a particular fact, it cannot be said that in ascertaining that fact and in issuing his proclamation, in obedience to the legislative will, he exercised the function of making laws. Legis-

[1] The Aurora *v.* United States, 7 Cranch, 382.

[2] Field *v.* Clark, 134 U. S. 649 (1891).

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lative power was exercized when Congress declared that the suspension should take effect upon a named contingency. What the president was required to do was simply in execution of the act of Congress. It was not the making of law. He was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect.

That the matter may be clearer, the opinion quotes from several decisions of state tribunals:

> The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercized under and in pursuance of the law. . . . The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government.

It may thus be taken as established that, whatever the nature of the powers which may or may not be exercised by the executive, it may be vested with wide powers of discretion in determining when any given provision of a statute is to be operative. In practical effect this differs little from the power to decide for a certain period what the law shall be.

This power of ascertaining a fact on which is to depend the operation or suspension of a general rule for all future cases within its scope is one which could not be exercized satisfactorily by the judiciary. Unless therefore the legislature were permitted to delegate this function to the executive, it would be practically impossible to have a law adaptable to such constantly changing circumstances as the commercial policies of foreign nations. For the legislature, even if always in session, could not be expected, with due regard to its other duties, to alter the law from day to day under the possible necessity of passing special enactments as to imports from each of the many exporting countries of the world. And since the purpose of the general policy is not retaliation but the securing of favorable consideration from other commercial nations, the executive is the only department

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adapted to the employment of the power for purposes of negotiation.

This method of legislation has been suggested for the purpose of securing reciprocal action by different commonwealths in social legislation, the commonwealth first passing any statute providing therein that it shall be operative only upon the passing of similar legislation by other commonwealths, as ascertained and proclaimed by the governor.[1]

3. *Power to make regulations*

Not only the power of ascertaining facts on which depends the operation, suspension or revival of a statute, but also power to make regulations, containing detailed provisions supplementary to an existing law, may be vested in an administrative authority. And by reasoning analogous to that already considered, this is shown not to be an exercise of legislative power.

So completely is the power recognized that in Boske *v.* Comingore[2] a regulation was sustained with no discussion either by counsel or by the court as to whether it was a delegation of legislative power. A regulation, declared Mr. Justice Harlan, "should not be disregarded or annulled unless, in the judgment of the court, it is plainly and palpably inconsistent with law." In a subsequent case a statute which expressed the purpose of excluding from the country the lowest grades of tea, and delegated to the secretary of the treasury the power to establish a uniform standard, was held merely to devolve on him the duty of effectuating the legislative policy declared in the statute.[3] Congress was said to have legislated on the subject as far as was reasonably practicable, leaving to executive officials from the necessities of the case the duty of bringing about the result pointed out by the statute.

Perhaps the boldest and at the same time the most inconsistent language of any court on this topic appears in Blue *v.*

[1] S. McC. Lindsay, "Reciprocal Legislation," POLITICAL SCIENCE QUARTERLY, vol. xxv, pp. 435–457.

[2] 177 U. S. 459 (1900).

[3] Buttfield *v.* Stranahan, 192 U. S. 470 (1904).

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Beach,[1] which sustained a regulation of the board of health excluding unvaccinated pupils from the public schools, under legislative authority to take action to prevent the spread of contagious diseases. The court declared that the legislature could not confer on any body or person the power to determine what the law should be, but added:

> This constitutional inhibition cannot properly be extended to prevent the grant of legislative authority, to some administrative board or other tribunal, to adopt rules, by-laws, or ordinances for the government of or to carry out a particular purpose. It cannot be said that every grant of power to executive or administrative boards or officials involving the exercise of discretion and judgment must be considered a delegation of legislative authority. While it is necessary that a law, when it comes from the law-making power, should be complete, still there are many matters relating to methods and details which may be by the legislature referred to some designated ministerial officer or body.

Thus in the same breath the court declares that a law must be complete when it comes from the legislature, and that it may be left to an administrative body to complete it; that there may be a grant of legislative authority to an administrative body, and that no delegation of legislative power is proper.

Administrative action to effectuate the general purpose declared by statute is sometimes authorized by granting power, not to ascertain facts on which depend the general operation or suspension of some provision, or to frame regulations of general application, but to issue orders requiring specific action in individual cases; and statutes granting such powers have been sustained. Thus the New York Court of Appeals upheld a statute requiring all houses of a certain description "upon direction of the board of health" to be supplied with water "in sufficient quantity"[2]; and the Supreme Court upheld an act of Congress empowering the secretary of war, when satisfied after a hearing that a bridge over a navigable waterway is an unreasonable obstruction to commerce, "to require such changes or alterations as will render navigation reasonably safe, easy and un-

[1] 155 Ind. 121 (1900).

[2] Health Department *v.* Rector of Trinity Church, 145 N. Y. 32 (1895).

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obstructed."[1] Congress might clearly itself have established general requirements for all bridges, leaving to the judiciary the task of ascertaining whether any specific structure violated the statute; or it could have legislated in detail as to any particular bridge after a report by the secretary of war. In effect, its action is an adoption in advance of recommendations which might have been made in such a report. The secretary in performing this duty, said the court, will only execute the "clearly expressed will of Congress," and will not "in any true sense" exercize legislative or judicial power.

If the principle for which the defendant contends received our approval, the conclusion could not be avoided that executive officers in all the departments, in carrying out the will of Congress as expressed in statutes enacted by it, have from the foundation of the national government exercized, and are now exercizing, powers as to mere details that are strictly legislative or judicial in character. . . . Indeed, it is not too much to say that a denial to Congress of the right, under the Constitution, to delegate the power to determine some fact or the state of things upon which the enforcement of its enactment depends, would be "to stop the wheels of government," and bring about confusion, if not paralysis, in the conduct of the public business.

Three years later the court reaffirmed the doctrine in even stronger terms, denying the right of judicial reversal of the administrative determination.

It is apparent from these citations that the distinction between powers strictly legislative and those which may lawfully be delegated to executive authorities is somewhat tenuous. The rights of individuals may be controlled by the judgment and discretion of the executive quite as much as by the discretion of the legislature. The practical necessities of government have compelled the courts to overcome the difficulties raised by the doc-

[1] Union Bridge Company *v.* United States, 204 U. S. 364 (1907).

[2] Monongahela Bridge Company *v.* United States, 216 U. S. 177 (1910). In Commonwealth *v.* Sisson, 189 Mass. 247 (1905), the court sustained an order of the fish and game commissioners directing a mill-owner to alter the construction of his mill and to cease to accumulate sawdust on the bank of a stream, although the action of the commissioners under the statute was termed "unquestionably legislative in character."

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trine of the separation of powers. They have done their best. The line to be drawn, declared Chief Justice Marshall,[1] is between those important subjects, which must be entirely regulated by the legislature itself, and those of less interest, in which general provisions may be made and power given to those who are to act under such general provisions to fill up the details. And Mr. Justice Harlan observed[2] that this power, which he declared to be based upon governmental necessity, is limited to the determination of matters which in the opinion of the court are "details." Any apparent conflict in the decisions upon the topic will be due to disagreement whether any given matter left to administrative decision is a mere detail or pertains to the substance of the policy of the statute. Among the attempted delegations which have been held improper are power given to party committees to decide whether nominations shall be made by a primary or by a convention of delegates chosen at a primary,[3] and whether nomination shall be by a majority or plurality vote,[3] and power to fix the boundaries of election districts.[4] But as to these cases it may be said that the matters are such as admit easily of a uniform rule declared by the legislature.

In so far as the delegation of legislative power is concerned, the doctrine of the separation of powers does not apply to the government of municipalities[5] or of the territories. In dealing with such recently-acquired territory as the Philippine Islands and Porto Rico, Congress may delegate legislative authority to such agencies as it sees fit,[6] and it may ratify regulations made by the military authorities[7] which the court had previously held not to be warranted merely by the fact of military occupation after cession.[8] The broad doctrine seems to be declared that Congress may ratify any regulation which it could previously

[1] The Brig Aurora, 7 Cranch, 382 (1813).

[2] Union Bridge Company *v.* United States, 204 U. S. 364. *Cf. supra*, pp. 226, 227.

[3] People *v.* Election Commissioners, 221 Ill. 9 (1906).

[4] Rouse *v.* Thompson, 228 Ill. 522 (1907).

[5] Cooley, Constitutional Limitations (7th ed.), p. 265, note 1.

[6] Dorr *v.* United States, 195 U. S. 138 (1904).

[7] United States *v.* Heinszen, 206 U. S. 370 (1907).

[8] Dooley *v.* United States, 182 U. S. 222 (1901).

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have delegated power to issue, and that after ratification the regulation is valid from the time of its original promulgation.[1]

For the most part the exercise of this power to make regulations is conditioned on express delegation by the legislature. But it has been held that the president, by virtue of his constitutional power as commander-in-chief of the army and navy, has the power to establish provisional courts for the hearing and determination of all causes arising under the laws of the state or of the United States in insurgent territory under the control of the United States military forces[2] and power to institute regulations providing for the establishment of courts martial.[3] The qualification "in the absence of legislation specially prohibitive," added in the latter opinion, make us doubtful, however, of the true source of the power. But this same power was recognized also in Dooley *v.* United States,[4] where the regulations of the commander of the army in Porto Rico and subsequent regulations by the president, establishing a system of tariff duties, were held to be proper exercises of the war power. But this power was said to become limited by the subsequent cession of the island by treaty, although it still remained under military control. The position of the court is somewhat vague. It is declared that, from the necessities of the case, the right to administer the government continued after the ratification of the treaty and until further action by Congress. This power to "administer" was said to be "absolute and despotic," but the power to exercize "legislative" functions "not without certain restrictions—in other words they would not extend beyond the necessities of the case." And it was held, therefore, that since the spirit as well as the letter of the tariff laws of Congress admitted of duties being levied only upon importations from foreign countries, the regulations of the commander could be made to apply only to goods from a foreign country, which the United States ceased to be by the

[1] United States *v.* Heinszen, 206 U. S. 370 (1907).

[2] The Grapeshot, 9 Wallace, 129 (1869).

[3] Swaim *v.* United States, 165 U. S. 553 (1897).

[4] 182 U. S. 222 (1901).

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cession. But it had been held previously that the authority of the military commander to exact duties continued after the ratification of the treaty of cession until notification thereof reached him.[1]

Outside of the authority inherent in the commander-in-chief of the army and navy, the power to issue regulations is conditioned on legislative delegation. But it is held that a head of a department may have the power by implication from other powers granted. The authority of the secretary of the treasury to require an oath to be taken, in certain proceedings before the department, was held to follow "by implication" from his power "to adjust and settle claims."[2] The court laid down as a general principle, "in the construction of powers of this sort, that where the end is required, the appropriate means are given." The fact that the Treasury Department had for a long period required such oaths to secure the government against frauds, without objection by Congress, was held to show decisively that its action was not to be deemed a usurpation of authority.

In St. Louis *etc.* Railroad Company *v.* Taylor,[3] the regulations sustained were framed by a body of experts having no official connection with the government. The case gave damages for personal injury where the basis of liability was the failure of the defendant to comply with requirements as to equipment fixed by the American Railway Association. The decision is not an express authority on the point of delegation to an unofficial body, because the regulations of the association were to be certified to the Interstate Commerce Commission and to be promulgated by them. But no provision appears giving the commission authority to revise the regulations certified by the association, although the commission was vested with power to make its own regulations in case the association failed to act. There are, however, instances of the delegation of the taxing power to private corporations,[4] and of the delegation of power

[1] Cross *v.* Harrison, 16 Howard, 164 (1853).

[2] United States *v.* Bailey, 9 Peters, 238 (1835). [3] 210 U. S. 281 (1908).

[4] Anderson *v.* Draining Company, 14 Ind. 199 (1860). New Orleans Draining Company, Praying for the Confirmation of a Tableau, 11 La. Ann. 338 (1856).

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to appoint public officials to a private corporation,[1] or even to unincorporated associations.[2]

Such then are some of the powers which may be exercized by executive and administrative authorities, be they legislative in their nature or not. They establish a rule for future cases. They constitute an integral part of the "expression of the will of the state."[3] And the administration, in performing its function in this expression of will, is no mere automaton manipulated by the legislature.

Departmental regulations made by virtue of the delegated ordinance power become so thoroughly a part of the statute that they are binding upon the department itself as well as upon the individuals with whom it deals. Thus where an importer was found by the court to have complied with regulations established by the secretary of the treasury, under which he was to be entitled to a rebate on the duty levied on imported raw materials when those materials became part of manufactured goods subsequently exported, it was held that this right could not be defeated by an order of the secretary forbidding the collector to proceed in accordance with the regulations established.[4] The importer was said to obtain his right from the law, of which the regulations when incorporated were a part, and it was held that the secretary could not by a subsequent order do what he could not do by regulations—repeal or annul the law.

The function of the administration is thus seen to be substantially similar to that which might have been exercized by an expert drafting commission before the law was finally passed. The legislation when complete is a mosaic: the design and general plan are the work of the legislature; to the administration

[1] Overshiner *v.* The State, 156 Ind. 187 (1901).

[2] *In re* Bulger, 45 Cal. 553 (1873).

[3] *Cf.* Goodnow, Politics and Administration, chapters i and ii, *passim*.

[4] Campbell *v.* United States, 107 U. S. 407 (1882). But *cf.* Dunlap *v.* United States, 173 U. S. 65 (1899). It seems that regulations relating merely to the orderly transaction of the departmental business may be disregarded by the department, when the effect of such disregard is to favor rather than to defeat an individual right. Indian Regulations, 3 Comp. Dec. 218 (1896), cited in Wyman, Administrative Law, sec. 4.

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is left only the function of inserting some of the minor pieces into the places designated. When this is done, the work of the administration is completed, its discretion exhausted; and the mosaic is then the handiwork of the legislature beyond the power of the department to remove directly or indirectly any of the portions it had been their function to inlay.

But although the department is bound to follow its own regulations when made, it may be vested with power to annul or to amend them; or the rights of individuals may be conditioned, not on compliance with the regulations, but on the certificate of the department that such compliance has taken place, making the department the final arbiter of the right.[1]

4. *Power to ascertain facts and apply rules of law in controversies*

The adjudication of disputed questions of fact and law in controversies between private individuals or between individuals and public officials is a function commonly committed to the judiciary; and the doctrine of the separation of powers is supposed to inhibit the exercise of what is regarded as judicial power by any other department of government than the judiciary, unless power of such nature is expressly vested in non-judicial bodies by the constitution.[2] There are many instances where powers delegated to administrative bodies by statute have been held invalid because deemed judicial in nature.

In People *v.* Chase,[3] it was held that the power sought to be entrusted to an administrative officer to issue certificates of title, which with certain exceptions should be conclusive against the world as to the ownership of the land in question, was void as a delegation of judicial power. Since the statute contemplated that the recorder should consider and apply the law to facts presented, the court declared that "it would be difficult to more clearly and positively confer judicial powers upon a person unqualified, under the constitution, to exercize those powers, than is done by this law." Other Illinois cases have held it improper to vest in "three disinterested men"

[1] United States *ex rel.* Riverside Oil Company *v.* Hitchcock, 190 U. S. 316 (1903).

[2] Kilbourne *v.* Thompson, 13 Otto, 168 (1880).

[3] 165 Ill. 527 (1897).

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power to assess damages for injuries caused by cattle running at large,[1] or to empower a poundkeeper to sell horses impounded for penalties accrued without a judicial determination of the fact that the penalties are due.[2]

But the courts of the same jurisdiction recognize that ministerial officers may be vested with the power to exercize what they term "quasi-judicial powers or discretions"; for example, in assessing damages and benefits for special assessments, in assessment of damages under an "Occupying Claimants Law,"[3] in trial of rights of property before a sheriff[4] and in valuation of property for taxes.[5] This doctrine of the administrative exercise of "quasi-judicial" powers obtains in all jurisdictions. An examination of the cases will disclose that these differ from what are regarded as judicial functions proper, not in the nature of the power exercized, but in the nature of the rights which the exercise of the power affects.

In fact it is repeatedly declared that administrative officers may in certain instances exercize judicial functions. On this point the courts have been more frank than with respect to the delegation of legislative powers. In referring to powers held to be lawfully vested in the commissioner of patents, the Supreme Court asserted that, although he is, generally speaking, an executive officer, in deciding whether a patent shall issue or not he acts on evidence, finds the facts and applies the law, and that "in all these he exercizes judicial functions."[6] The opinion quotes further from Butterworth *v.* Hoe[7]: "The investigation of every claim presented involves the adjudication of disputed questions of fact, upon scientific or legal principles, and is, therefore, essentially judicial in its character." These decisions, it is true, involved the question whether a statute giving

[1] Bullock *v.* Geomble, 45 Ill. 218 (1867).

[2] Peppen *v.* Holmes, 44 Ill. 360 (1867). *Cf.* Portland *v.* Bangor, 65 Me. 120 (1876), which declared invalid a delegation to overseers of power to commit to a workhouse persons declared by them to be vagrants.

[3] Ross *v.* Irving, 14 Ill. 171 (1852).

[4] Rowe *v.* Bowen, 28 Ill. 116 (1862).

[5] Bureau County *v.* Chicago *etc.* Railroad Company, 44 Ill. 229 (1867).

[6] United States *v.* Duell, 172 U. S. 576 (1899). [7] 112 U. S. 50 (1884).

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to the courts an appeal from the decision of the commissioner was void as an attempt to thrust non-judicial functions on the judiciary; but similar language occurs in a decision which holds that the finding of the secretary of the interior is final, and its correctness not a matter for the courts.[1] Mr. Justice Peckham declares that Congress has constituted the Land Department, under the supervision and control of the secretary of the interior, a special tribunal "with judicial functions," to which is confided the execution of the laws which regulate the purchase, selling, care and disposition of the public lands.

Some courts, however, are unwilling to put the matter so frankly and prefer to play the familiar game of juristic logomachy. In holding that the power vested in a board of medical examiners to license physicians was not a power appropriately belonging to the judicial department, the court observed:

> Many executive officers, even those who are spoken of as purely ministerial officers, *act judicially* in the determination of facts in the performance of their official duties; and in so doing they *do not exercize judicial power*, as that phrase is commonly used, and as it is used in the Organic Act in conferring the judicial power upon specified courts.[2]

In another opinion a "judicial duty within the meaning of the constitution" was said to be "such a duty as legitimately pertains to an officer in the department designated by the constitution as judicial."[3]

Thus, in spite of repeated judicial assertions that executive and administrative authorities can not exercize judicial power, it is manifest that many of the functions they are permitted to perform are similar in nature to the functions exercized by the judiciary and long recognized as belonging peculiarly to that department of government. In disputes between individuals, bodies other than judicial determine controverted questions of fact and apply rules of law to facts found; and in subsequent judicial proceedings the courts often decline to reëxamine the

[1] United States *ex rel.* Riverside Oil Company *v.* Hitchcock, 190 U. S. 316 (1903).

[2] People *v.* Hasbrouck, 11 Utah, 291 (1895).

[3] State *v.* Hathaway, 115 Me. 36 (1892).

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evidence to ascertain whether in their opinion a conclusion of fact reached by an administrative body is correct,[1] and, in some instances, even decline to ascertain whether in their opinion an administrative application of law to facts found accords with settled principles of construction.[2]

But the determination of guilt in criminal prosecutions can never be committed to other than judicial officers. Congress attempted in the Chinese Exclusion Act to vest in administrative authorities the power not only to exclude aliens but to punish them for unlawful entry. But the Supreme Court declared that, although summary methods might be employed to exclude those who had unlawfully entered,

> to declare unlawful residence within the country to be an infamous crime, punishable by deprivation of liberty and property, would be to pass out of the sphere of constitutional legislation, unless provision were made that the fact of guilt should first be established by a judicial trial. It is not consistent with the theory of our government that the legislature should, after having defined an offence as an infamous crime, find the fact of guilt and adjudge the punishment by one of its own agents.[3]

But the imposition of money penalties is held not necessarily penal in nature, even where exacted by reason of the violation of some statute.[4] It has been held recently that the secretary of commerce and labor may enforce, without invoking the aid of the courts, the statutory penalty imposed for the violation of the prohibition against introducing to the country aliens with certain specified diseases.[5] Under the provisions of the statute, the fact of disease existing at the time of embarkation was ascertained and the consequent liability of the steamship company determined by a medical officer of the marine hospital service, and the penalty was then exacted as a condition prerequisite to granting clearing papers for the vessel. The court denied that

[1] Bartlett *v.* Kane, 16 Howard, 263 (1853).

[2] Bates and Guild Company *v.* Payne, 194 U. S. 106 (1904).

[3] Wong Wing *v.* United States, 163 U. S. 228 (1896).

[4] Hepner *v.* United States, 213 U. S. 103 (1909).

[5] Oceanic Steam Navigation Company *v.* Stranahan, 214 U. S. 320 (1909).

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the company had any right to be heard as to the admissibility of any individual alien, and said that

> the plenary power of Congress as to the admission of aliens leaves no room for doubt as to its authority to impose the penalty, and its complete administrative control over the granting or refusal of a clearance also leaves no doubt of the right to endow administrative officers with discretion to refuse to perform the administrative act of granting a clearance, as a means of enforcing the penalty which there was lawful authority to impose.

This decision shows that the distinction between judicial and administrative action which was applied in Kentucky and Indiana Bridge Company *v.* Louisville and Nashville Railroad Company[1] is not of universal validity. It was there asserted that the powers conferred upon the Interstate Commerce Commission are not judicial because its action upon matters brought before it "is neither final nor conclusive; nor is the commission invested with any authority to enforce its decision or award." Such a test doubtless furnishes the most satisfactory basis upon which to sustain many instances of administrative action alleged to be judicial. But often it is held that the decision of the administration is final and conclusive and will not be reviewed by the courts. In such cases, the fact that the enforcement of the decree must be entrusted to a marshal or a sheriff rather than to an agent of the administration seems of slight importance.

5. *Conclusion*

The esteem in which the framers of our constitutions held the doctrine of the separation of powers fell little short of veneration. The maintenance of its integrity they deemed essential to the preservation of liberty. And our courts have continued to worship at its altar, even when their decrees paid but empty honor to its memory. Reverence for the theory survives even the refinements of reasoning which have governed its application. But its vitality is to be determined by the acts which may be done in its name.

[1] 37 Fed. Rep. 567 (1889).

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The assumption that governmental power is divisible into mutually exclusive kinds of action has proved inapplicable to the concrete problems of government. No classification of powers, based upon the nature of the body to which any kind of action is commonly delegated, can furnish mutually exclusive kinds of power, capable of differentiation by reason of their intrinsic qualities. For exercises of power, demanding identical mental processes, relating to kindred subject matters, and producing kindred results, are committed to legislative, judicial and administrative organs by the very constitutions which attempt to translate the theory of the separation of powers into a rule of law. The opinion in Kilbourne *v.* Thompson,[1] which held invalid the attempt of the legislature to punish for contempt in a certain class of legislative proceedings, on the ground that the power was in its nature judicial, expressly asserted that such power might be exercized in other classes of legislative proceedings, such as impeachments, where judicial power was expressly conferred on the legislature by the Constitution.

And if we attempt to classify powers according to their nature, by induction, men will have difficulty in agreeing upon the *a priori* basis of classification. The ascertainment of the nature of any specific action taken by any department of government otherwise than by the character of the body by which it is performed must depend upon some vague notion of political theory as to what ought to be, or some nebulous speculation as to the nature of the mental processes demanded in the solution of each particular problem. Most acts of the higher executive authorities require both the formulation of a general rule and the determination of its applicability to the specific case—processes usually assumed to be characteristic of legislation and adjudication respectively. And even the lowest administrative act consists not solely in mechanical execution but partly in the determination of the applicability of some general rule.

But this task of classification, however difficult, is forced upon the courts. In order to sustain any statutory delegation of power to the administration, they are compelled to hold that it is neither legislative nor judicial. And in their decisions, the

[1] 103 U. S. 168 (1880). *Cf. supra*, p. 215.

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theory of the complete partition of the functions of willing, adjudicating and applying has been compelled to yield to the practical exigencies of government.

While it is true that "the executive, legislative and supreme judicial powers of the government ought to be forever separate and distinct," it is also true that the science of government is a practical one; therefore, while each should firmly maintain the essential powers belonging to it, it cannot be forgotten that the three coördinate parts constitute one brotherhood, whose common trust requires a mutual toleration of the occupancy of what seems to be a "common because of vicinage," bordering the domains of each.[1]

The doctrine of the separation of governmental powers, then, as a complete denial of the capacity of one department of goverment to exercize a kind of power assumed to belong peculiarly to one of the others, does not obtain in our public law beyond the confines of the printed page. But from the point of view of the individual whose rights are affected by governmental action, it protects him in most of his dealings with governmental authority from the arbitrary power of a single official or group of officials, and secures to him in most instances the right not to be disturbed save by the concurrent action of two or more of the different departments among whom governmental power is apportioned. The cases in which such concurrence is not secured are confined to those spheres of governmental action where individual privilege rather than individual right is at stake,[2] or where the exigencies of government are deemed by the court so important that the interest of the individual must not defeat the collective interest of the whole people of whom he is a part.[3]

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[1] Bynum, J., in Brown *v.* Turner, 70 N. C. 93 (1874).

[2] Importation of goods: Buttfield *v.* Stranahan, 192 U. S. 470 (1904). Use of the mails: Bates and Guild Company *v.* Payne, 194 U. S. 106 (1904). Acquisition of public lands: Smelting Company *v.* Kemp, 104 U. S. 636 (1881). Enjoyment of corporate privileges: Reagan *v.* Farmers Loan and Trust Company, 154 U. S. 362 (1894).

[3] Taxation: Hilton *v.* Merritt, 110 U. S. 97 (1884). Exclusion of aliens: United States *v.* Ju Toy, 198 U. S. 253 (1905). Protection of public health: Valentine *v.* Englewood, 76 N. J. Law, 509 (1908).

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INTEREST AND PROFITS IN RATE REGULATION

PRACTICE OF THE WISCONSIN RAILROAD COMMISSION

WHEN the railroad commission of the state of Wisconsin, organized in accordance with the Railroad Commission Acts of 1905 and 1907, started upon its work of regulating the rates and services of all public utilities operating within the state, it was confronted by the problem of formulating a theory by which it should be guided and upon which its subsequent decisions should be grounded. This part of its task was considerably lessened by reason of the fact that the core of that theory—the question of valuation—was not the mooted question in Wisconsin that it was (and still is) in many other states. Accepting an advanced view of the physical-valuation doctrine, the commission proceeded to work out the details in a manner which should be at once consistent, in accord with the spirit of the law, and fair to all parties concerned. It is with a statement of that theory as relating to profits and interest that this paper is concerned.

It may be well at the outset to review briefly the attitude of the Wisconsin commission on the question of the valuation of public utilities. After stating the current legal fiction of introducing all elements, it proceeds to eliminate the most of them.[1] If one endeavors to ascertain the book value of the plant, even with the intention of correction, it is discovered that "the original records are often missing,"[2] or that this value is so "dependent upon the original cost, and even on the cost of reproduction and other elements, that it is difficult to draw any distinct lines between them."[3] The market price of stocks and

[1] Hill *v.* Antigo Water Company, Wisc. R. R. C. D., iii, 623, 631 *et seq.* *Cf.* also State Journal Printing Company *v.* Madison Gas and Electric Company, *ibid.* iv, 501, 590. All references given are to the Opinions and Decisions of the Wisconsin Railroad Commission, unless otherwise stated.

[2] Hill *v.* Antigo Water Company, iii, 623, 635.

[3] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 557, 558.

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bonds for purposes of rate-making is likewise rejected. The earnings of a plant, the commission finds, and the rates the plant charges are dependent upon each other. In view of this fact, it holds that the former cannot be a safe and equitable basis for any valuation upon which rates must be based.[1] As regards the use of capitalization the commission says: "The capitalization should also be considered . . . . In many cases, however, it is found to cover such variety of elements, relevant and irrelevant, that it frequently is of comparatively little assistance in determining the fair value of plants."[2] A knowledge of the original investment is of no greater value, since

> The original cost, even when shown in full detail, may not be the same as the value upon which the investors are entitled to reasonable returns. . . . The problem, therefore, is to find a valuation that is reasonable to both sides, and this value, when found, may not always be represented by the amount of money actually invested. The plant, for instance, may have been built when prices were abnormally high. Money may have been squandered through lack of ordinary foresight, the failure to secure competent engineering advice, excessive promotion fees and discounts, private understandings with the contractors in charge of the construction, and in many other ways. On the other hand, the plant may have been constructed when prices were excessively low, or it may have been taken over at an exceedingly low price due to failures, foreclosure sales or other reasons depending very largely upon the foresight and enterprise of the owners. In such cases it would seem to be no fairer to charge the consumers with excessive costs in the one case, than it would be to give them all the benefits of the low costs in the other.[3]

In view of these facts, the commission settles upon the cost of reproduction new, less depreciation, and including a fair allowance for legitimate intangible values, as the most equitable standard for valuation when the matter of rates is at issue. Thus it says:

> It appears that, with certain qualifications, the cost of the plant, of the

[1] Hill *v.* Antigo Water Company, iii, 623, 716–720.

[2] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 558.

[3] Hill *v.* Antigo Water Company, iii, 623, 632, 633.

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building up of the business and of the franchises (where actually paid for), as represented not only by the original outlay but by the cost of reproduction, constitute the leading elements that should be considered in determining the value of a public utility for rate-making purposes.[1] . . . Our conclusion is so near to the cost of reproduction new, that we have concluded to accept that valuation, not because it happens to be made on any particular basis, but because it is equivalent to a composite value arrived at after taking into account the various elements suggested by the court.[2] . . . While the cost of reproduction new is thus ordinarily one of the important, if not the most important, elements that enter into that valuation upon which the earnings should be based, there may also be instances when the cost of reproduction new, less depreciation, . . . may bear a close relation to the valuation in question.[3]

Such, then, in brief, is the basis worked out by the commission for valuation in questions relative to rate-making. From this starting point it proceeds to discriminate between interest and profits, on the ground that "interest arises from the use of capital, and profits have their source in business ability, skill and foresight in management, as well in the risks assumed by it or by the entrepreneur."[4] After pointing out that the classical economists made no distinction between the two, the commission notes that the growth of modern business has compelled a more detailed and accurate analysis.

Before the advent of the modern corporation and the present facilities for credits, the capitalist and the employer were one and the same person. . . . The employer himself furnished all the capital, managed the business, and assumed all the risks. In other words, he performed all the functions for which interest and profits are received. . . . Today those who have capital, but do not prefer to risk it in their own business, usually loan it to those who have business abilities and are engaged in industrial enterprises, and who are willing to pay the current rates of interest on such loans. . . . Those who furnish the capital receive interest thereon. Those who borrow it and use it in their business pay

[1] Hill *v.* Antigo Water Company, iii, 623, 630.

[2] Buell *v.* Chicago, Milwaukee and St. Paul Railroad, i, 324, 481.

[3] Hill *v.* Antigo Water Company, iii, 623, 640.

[4] *Ibid.* pp. 751, 752.

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this interest, and, as compensation for their services of management and the risks they assume, receive profits or the surplus above the expenses. . . . Such borrowing simply amounts to this, that the employers assume the control and risks of these loans until they are paid back. . . . In other words, the employers under modern conditions assume, on their own responsibilities, the difficult but important tasks of so directing the work of manufacturing, marketing and selling the products, that any given amount of efforts may be most effective in supplying human wants.[1] . . . If the preceding analysis of interest and profits, or of the part which capital and the employer play in modern production or in the services rendered by public utilities, is even approximately correct, then it also follows that interest proper should include only the amount that is paid for the use of the capital employed; that profits consist of the wages of management, broadly interpreted, of compensation for the risks and responsibilities that must be borne by the employers, and of such other compensation, if any, as may be demanded by the conditions; that each of these elements, in the long run, must be high enough to attract capital and business ability into such utility enterprises; and that it is the duty of the commission, in passing upon matters in which interest and profits are involved, to determine in each particular case how much is to be allowed for each of these elements.[2]

The distinction thus made by the Wisconsin commission between interest and profits was not, of course, new with it. Sixteen years earlier President Arthur Hadley had drawn the same distinction and had carried it to its theoretical conclusion.

In any large investment there are two classes of interests, represented roughly by the stockholders and the bondholders of a railroad. The former class wants *control;* it is willing to take risks and pay for them for the sake of contingent profits. The latter class wants security and fixity of returns; for the sake of this it is willing to delegate control and to abandon possible chances of large gain. . . . The justification of interest, as an institution, is . . . to be sought . . . in the fact that it furnishes a means of natural selection of employers, whereby the productive forces of the community are better utilized than by any other method hitherto devised. . . . Capital gives its possessor the right to direct the productive forces of society and take the speculative risks in so doing. . . . [Interest] is paid by one capitalist for the sake of controlling

[1] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 635-637.

[2] Hill *v.* Antigo Water Company, iii, 623, 764.

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another man's capital. It enables the enterprising men to get the direction of a larger amount of productive power than would otherwise be possible. If their methods are good, it contributes to the more speedy adoption of these methods; if they are bad, it contributes to the more speedy elimination from the ranks of the capitalists of the men who make such mistakes. The institution of interest is like that of joint-stock companies in giving men control of larger capital than they themselves own; while, unlike a joint-stock company, it automatically eliminates men from control who have made mistakes.[1]

As regards the question of interest, then, we find nothing essentially new in the fundamental position of the commission. The justification and the necessity of the payment of interest are clearly brought out, the distinction between gross and net interest is made, and the determination of the rate of interest under a régime of competition is discussed. All these matters are treated at some length in the cases of Hill *v.* Antigo Water Company,[2] in State Journal Printing Company *v.* Madison Gas and Electric Company,[3] and in Payne *v.* Wisconsin Telephone Company.[4] These cases should be consulted wherever a more detailed statement is desired. In brief, the commission takes the following position. "Interest is justifiable because of the importance of capital in production, and necessary because without it capital cannot be had for industrial and commercial purposes."[5] Gross interest includes payment for the use of capital plus reward for risk, care in placing and supervising the loan, the degree of its convertibility, and other similar factors, while net interest is the amount paid for the use of money as such.[6] The rate of interest under competition is fixed by "the demand for and the supply of capital."[7]

It is almost commonplace to state that capital is subject to the accepted laws of competition, and that the gross rate of return which it can command depends upon competitive forces. The competition of

[1] Hadley, "Interest and Profits," *Annals of the American Academy of Political and Social Science*, vol. iv, pp. 337, 339, 342, 343.

[2] III, 623. [3] IV, 501. [4] IV, 1.

[5] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 634.

[6] Hill *v.* Antigo Water Company, iii, 623, 753. [7] *Ibid.* p. 752.

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capital among different industries and localities in the same country, as well as the competition of capital among foreign countries, is well understood. These national and international competitive forces control the rate of interest everywhere, including Wisconsin. What the particular rate of interest is or will be is purely a matter of experience. The money market reflects and determines it. There are great demands for investment funds in the Orient, Africa, South America, in the islands of the Pacific Ocean, in Alaska, in the West Indies, and other places, not to speak of demands at home. Wisconsin cannot segregate itself and stand in isolation as if exempt from these forces. . . . One of these forces which is active in Wisconsin, but not in many localities, is the Public Utilities Law.[1]

In turning to a consideration of the position of the commission on the question of the rate of interest to be allowed in the case of regulated public utilities, we find a more fruitful field of study. The general principle laid down by the commission is this: that the rate allowed should be such as money would bring under competitive conditions, under similar circumstances.

It is quite generally held that a fair rate of interest is a rate which, other things being equal, corresponds to the current market rates on money. This is a position with which it is not easy to take issue, for it is quite clear that whatever rate money brings in the market is a safe index to what it is generally worth for investment purposes. It may also be said, and with a great deal of force, that a fair rate of interest for any particular road is the rate of income which its securities bring on their market value. The market rate includes the ordinary risks, as it is usually considerably higher than the rate which is obtained on government and other securities where substantially no risks at all are involved.[2]

In fixing upon a rate of interest to be allowed a particular road or plant, the commission maintains that there are five factors to be borne in mind: (1) the kind of utility; (2) the age of the plant or business; (3) the effect of the public utilities law; (4) the risk involved; (5) the relation of the utility to

[1] Payne *v.* Wisconsin Telephone Company, iv, 1, 63.

[2] Buell *v.* Chicago, Milwaukee and St. Paul Railroad Company, i, 324, 477, 478.

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the community it serves. Each of these factors is considered separately.

As regards the kind of utility, more will be said later on[1]; but a brief statement of the position taken by the commission will not be out of place here.

> The rate of return which must or should be allowed on whatever investment may be determined to exist obviously depends both upon the class of the utility enterprise—whether gas, electric, water, telephone *etc.*—and the character of the individual plant and the circumstances under which it is operated within that class. Whatever rate of return may be determined upon, this rate must be sufficient, under all the circumstances, in each case to attract capital to that individual or class of enterprise.[2]

A second factor recognized, and very properly, as influencing the rate of interest which a company is compelled to pay on its capital, is the age of the plant or business. On this point the commission says:

> The risks are also greater when its plants are new than later on when their business becomes established. That this should be the case is perhaps natural. In the first place, there is always some doubt as to the success of new undertakings. Unforeseen obstacles may arise in the construction which tend to materially increase its cost. Mistakes of various kinds may also occur which may not only enhance the cost but result in a defective plant. There may also be doubts as to how long a plant of this kind will have to be carried before the earnings become large enough to meet the expenses. In fact, few water works pay during their earlier years, and this is also true of other utilities. Facts like these always tend to retard investments and, therefore, also have the effect of keeping interest rates at a higher level for new than for older plants. That interest rates are higher at first than later on is shown by the financial history of most successful public utilities and of other enterprises. In the cases of most railroads the bonds which were issued for the first part of the construction work often bear twice as high interest as bonds that were issued since the traffic had been developed. . . . While the costs of the capital in this case may appear

[1] *Cf. infra*, pp. 256 *et seq.*

[2] Payne *v.* Wisconsin Telephone Company, iv, 1, 63.

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high, they are the best terms upon which it could be had. It is because of the fact that no better terms were available that a part of the discounts in this case were permitted to remain in the construction account or in the cost of the plant where they had been charged. When conditions are such that sufficient capital cannot be had without such discounts, it is difficult to escape the conclusion that, in some form, these discounts will have to be borne by the consumers. Unless it is so borne, investors and promoters . . . will not enter the business. If capital and business enterprise cannot be had on any better terms, then it necessarily follows that such discounts represent a part of the cost of securing these factors. It must be paid or the plant will not be built. There appears to be no escape from this. If it is a legitimate cost, it should also be treated as such.[1]

The question of the rate of interest to be allowed a public utility plant during its period of construction is so intimately connected with that of the rate during its earlier years of active operation that it is desirable to call attention to the position of the commision on this point. This aspect of the problem is particularly difficult; all the more so in that there are certain inevitable conflicts between the theoretical treatment and the practical. A careful perusal of the following statement, however, can but serve to convince one of its essential soundness.

Interest on the cost during the period of construction would seem to be one of the necessary elements that should be included in the total cost of the plant. . . . It is an item that cannot be eliminated from any undertaking where money or capital is needed. The only question that can very well be raised regarding such interest is as to the amount that is actually paid out for this purpose. The amount so paid might be exorbitant. . . . Interest charges may have been loaded with items that do not belong there. . . . But the fact that interest on the capital used must be paid is too well settled to be questioned here.[2] . . .The element of interest during construction, theoretically, is the current rate for the use of each item of the outlays during the time which intervenes between each such outlay and the date of the completion of the plant up to the point of operation. . . . As a practical question, it would seem inevitable that the actual interest cost might, in some

[1] Hill *v.* Antigo Water Company, iii, 623, 755, 756, 758.

[2] *Ibid.* p. 646.

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cases, be even greater than this, for the money might have to be provided in advance of the installation of the integral parts of the plant. Land has to be provided, franchises secured, organization effected, bonds marketed and much expense incurred at the start. The opinion, however, seems to prevail that all the money should be figured as under interest for half the construction period. This is equivalent to an assumption that the expenditures involved in construction would follow a uniform curve from the commencement of construction to completion thereof to the point of operation, and that money could be borrowed just as needed, or, if borrowed all at the beginning, could be placed at interest at the rate paid for the whole amount and withdrawn as fast as needed in the work of construction. Such an assumption is no doubt warranted in cases where those who construct the plants possess ample means or good credit. . . . There are undoubtedly many plants where the interest chargeable to construction is relatively no greater than this [three per cent, being one-half of the current rate]. When the plants must be financed under less favorable conditions, the chances are that the interest chargeable to construction is greater than that just outlined. In some cases, for instance, the conditions upon which the money is obtained are such that interest charges on the entire cost of construction begin at the time or even before actual construction is begun. In addition to this, the bonds and other securities upon which the money is secured often have to be sold at discounts. When money is thus obtained in advance, part of the interest charges may, of course, be offset by re-investing the money until needed. But as such investments must be made for short periods only, the interest obtained thereon is usually much less than sufficient to offset the amount paid by the company. Plants which must be financed under such or similar conditions may have very heavy interest charges to meet for construction. . . . Such interest charges must either be paid or the municipality be compelled to do without the utility. The amount will depend largely upon commercial conditions.[1]

The treatment of these charges by the commission may well be noted. The position is taken that such charges should ordinarily be included in capitalization, not written off. Obviously, where these discounts are to be met, they should not be included in both investment and the rate of interest. Just where to place them depends upon circumstances. They may gradually be wiped out by being charged against earnings,

[1] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 543, 544.

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although this is not always either practicable or fair. They cannot be fairly charged to earnings, unless these are large enough to yield a surplus for this purpose above the operating expenses, including a fair return to capital and the entrepreneur. If the rates are sufficient to cover such discounts, then it also follows that present consumers are charged higher rates for the benefit of future consumers. Such plants are built for the future as well as for the present. The cost of these plants must be borne by the consumers. It is a charge that should be levied equally on all. . . . The most equitable practice in this respect would ordinarily seem to be to include all legitimate items in the total cost of the plant and its business, and then charge the annual interest upon this against all the consumers from year to year.[1]

The third of the five factors which influence the rate of interest allowed to regulated public utilities is, as noted above, the effect of the law itself. Passing briefly over the well-known fact that the rate is ordinarily lower on bonds than on stocks, inasmuch as they are better secured and carry with them no obligations in case of a loss,[2] the commission is of the opinion that the effect of the public-utilities law will be ultimately to lower the rate of interest. In answer to certain arguments raised to the contrary it says:

There is every reason to believe . . . that the operation of the Utilities Law will eventually result in greater stability in the investment in public utility enterprises, and that this will be followed by a relatively lower rate of interest may reasonably be expected from the nature of the competitive forces operating upon capital.[3]

The final factor—the relation of the utility to the community it serves—is of the greatest importance, and failure to recognize it has brought more than one commission into serious difficulty. The following statement is therefore of particular value:

Securities of public utilities that are not over capitalized ought to be among the safest of investments. Such utilities are monopolistic in their nature and therefore not often exposed to all the hazards of com-

[1] Hill *v.* Antigo Water Company, iii, 623, 758, 759.

[2] *Ibid.* p. 754.

[3] Payne *v.* Wisconsin Telephone Company, iv, 1, 63, 64.

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petition. The services they render are, in most instances, necessities. . . . But such securities do not often sell at such prices [that is, at par]. For this, local conditions are often responsible. For instance, the relations between the plant and the community it serves may be strained or irritating. This relation may be as embarrassing or harmful when caused by political agitation and strife as when due to lack of tact or to arbitrary methods on the part of the management of the plant.[1] . . . The rate of interest upon the investment that should be allowed for public utilities is a question that largely depends upon the conditions by which each plant is surrounded. . . . In view of these facts it would seem that the utilities of the kind involved here are not entitled to as high rates of interest as ordinary industrial and commercial enterprises that are operating under competitive conditions.[2]

Let us turn for a moment from a consideration of the item of interest to that of profits. The Wisconsin commission recognizes that profits consist of return to the entrepreneur for risks assumed, for wages of management and for the other factors usually considered under this head. It says, however, that "the laws governing the rate of interest are much better understood than those governing profits," the latter, in fact, not being governed by any single set of principles. Elaborating the distinction, the commission says:

In addition to the operating expenses, including depreciation and the amount actually paid as interest on the investment, there must also be some allowance for those who carry on the business and who assume all the risks and responsibilities connected therewith. This allowance is usually called profits.[3] . . . The work of the employers may, in a general way, therefore be said to consist in bringing together the labor and capital that may be required; . . . of determining what is to be produced as well as the methods of production; of finding the market and arranging for the sale of the products; they superintend and watch the carrying out of their plans, sometimes in a more general way only, but often in detail, depending upon the volume and nature of the business; and in addition to this they also assume the risks that are in-

[1] Hill *v.* Antigo Water Company, iii, 623, 754.

[2] *In re* Application of the North Milwaukee Light and Power Company, iv, 89, 97.

[3] Hill *v.* Antigo Water Company, iii, 623, 759, 760.

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volved in their undertakings. In other words, they are the general directors and risk takers of their businesses.[1]

With regard to the underlying principles governing the rate of profits under competition, the commission says :

What is true with respect to the varied character of the work of the employers is also true with respect to their compensation for this work. While this compensation, when considered as a whole, is called profit, it could undoubtedly, upon sufficient analysis, be divided up into as many classes as the work. To do this, however, is very difficult. Profits, being a surplus, are not determined by any one set of principles. They are the result of the many forces that affect the prices at which the products sell as well as the cost at which they are produced. In a general way, however, it can perhaps be said that profits are made up of the wages of management, of speculative gains from the risks which have to be assumed, gains which depend upon chance rather than foresight, and of gains due to power of bargaining, and other conditions of this nature, including monopoly powers.[2]

Having thus stated the general theory of profits, the commission considers separately and at some length the individual factors entering into their determination. The discussion does not vary greatly from that found in many textbooks[3]; and it is unnecessary to go into this part of the treatment in any detail, except upon one point. The exposition of the influence of risk as a factor in profits (commonly called "speculative gains") is worthy of note, not alone because of its accuracy but also because of the large part which this factor plays in questions of the regulation of profits in the case of monopolies. This point is too often disregarded by those who seek to limit the profits of so-called monopolies. Particular attention should therefore be paid to the following statements:

In industries where certain monopoly conditions prevail, such as public utilities, competitive risks are of course of much smaller importance. In such industries the supply is under control and there is no direct com-

[1] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 637.

[2] *Ibid.*

[3] *Cf.* for instance, Ely, Outlines of Economics, pp. 439-457.

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petition in the sale of their products or services. There are, of course, exceptions to this, but these are not frequent, nor often serious or permanent. . . . Water works have little or no other direct competition to contend against than such water supplies as may be obtained from wells and near-by rivers and lakes, and such competition is not often serious enough to materially affect conditions. This is also, in the main, true for gas and electric companies, although these compete some as between each other. When they have exclusive franchises, they can meet with no direct competition, and even when their franchises are not expressly exclusive, they are often practically so in effect. Both may suffer some from such substitutes as oils and acetyline plants, but even such competition is seldom met with as long as rates are held down to reasonable limits. Gas and electric current used for power have of course to contend against each other as well as against steam, but the seriousness of this is usually materially reduced by the fact that each, to a certain extent, has a field of its own to supply. That is, there are certain demands for power in each case that are best served by one or the other of the utilities mentioned, or in which each has some advantage over the other. In considering everything, therefore, these utilities do not appear to be as great sufferers from either direct or indirect competition as is the case in most competitive undertakings.[1]

It is not to be supposed, however, that even industries partaking of a monopolistic character are exempt from all risk. They are, in fact, subject to certain risks which are not competitive but which are in many respects quite as serious and are even more completely beyond the power of the manager to eliminate. Some of these are mentioned in the following passage:

But there are in public utilities, as well as in other industries, other than competitive risks. In the construction and operation of such plants many accidents may be met with and many mistakes may occur. While some of these might have been foreseen and prevented, others may be beyond human intelligence and grasp. Many examples of this might be mentioned. Such plants may also be injured by the diversion of the growth of the city in a different direction from that expected when the plants are built; by the failure of the city to grow as

[1] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 643, 644.

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rapidly as expected or as rapidly as the plant had made preparation for; by the failure of the city to grow at all, as well as by decreases in its population and industries; by actions of the local and other authorities by which unprofitable extension may be required, the rates reduced, or other burdens imposed, as public utilities usually have to furnish adequate service whether it is paying or not. . . . In view of these and other facts, it is clear that public utilities are not entirely exempted from risks, and that, therefore, there is a speculative feature about them for which their owners are entitled to something in the way of speculative gains.[1]

Owing to the fact that a monopoly has control over the supply,[2] it is true in general that profits derived from non-competitive enterprises are higher than those prevailing under competitive conditions; but there are many exceptions to this rule, and some public-utility plants are earning no more, and some even less, than competitive industries. Thus the commission says:

In monopolistic industries the average profits are often greater than in competitive ones. . . . Regardless of these facts, there appear to be many enterprises of a monopolistic nature, such as public utilities, that are not even earning the average profits, but are actually losing money from year to year. That this is the case is clearly shown by their financial reports and records. In some instances this is due to lack of customers, or to the fact that the places where the utilities are located are too small to furnish the requisite number of customers. . . . In other cases, again, it is due to such adjustment of the rate schedules that the proper extension of the business is effectively prevented. In still other cases it is due to the fact that the rates charged are too low to yield a profit. This is sometimes the case when the rates are fixed by the municipality. In some cases such losses are therefore due to conditions that may be removed through more efficient management and more equitable rate schedules, while in other instances they seem to be beyond remedy until the places which the utilities are serving have attained their proper growth or development. But while many public utilities are losing money, there are also a great many of them that are

[1] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 644, 645. *Cf.* Hill *v.* Antigo Water Company, iii, 623, 760, 761.

[2] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 645, 646.

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making good profits. . . . The present situation therefore, is, that the speculative and other gains vary from nothing up to sums that amount to several per cent on the investment.[1]

In attempting to lay down a workable rule of procedure by which it may determine what rates of profits (and of interest as well) will be in accord with the above principles, the Wisconsin commission follows the practice of allowing the company a rate which, so far as it can be ascertained, would exist *under similar circumstances* under competition. In treating of this phase of the subject three main points may be noted: (1) under ordinary conditions such a rate would be fair to both utility and consumer; (2) plants so located that under reasonable competition no return at all would exist cannot expect to be allowed under regulation rates high enough to yield a profit; (3) public interest is paramount to private interest, and conditions may exist where the utility may be compelled to continue in operation even though it do so at a loss. These three propositions will be treated separately.

(1) Under ordinary conditions such a rate would be fair to both utility and consumer. Thus it is said:

> The rate that may be considered a reasonable return for interest and profits on the investment undoubtedly varies with the circumstances. Generally speaking, however, it can perhaps be said that under normal conditions it consists of the ordinary rates for capital similarly invested, and that are sufficiently high to encourage investors to enter such enterprises.[2]

The position taken by the commission is more fully explained in the following passage:

> The amount which constitutes a reasonable return on the investment may also vary with both local and general conditions. In a general way the reasonable return may be said to be that rate of return at which capital and business ability can be had for development. Theoretically it cannot be lower than this, for in that case no capital would enter the field. Under free competition it could not, in the long run, be

[1] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 646, 647

[2] *Ibid.* p. 626. *Cf. in re* Fond du Lac Water Company, v, 483, 506.

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higher than this figure, for if it was, the supply of capital for these purposes would be increased, and this increase, in turn, would tend to reduce the rate of profits and interest. But free competition is out of the question in the case of such utilities, for they are monopolistic in their nature. It is for this reason that in the case of such monopolies the term "reasonable" has been substituted for the conditions otherwise brought about through competition. Since competition did not exist, it could not regulate, hence some other regulating force had to be resorted to. This force is implied in regulation through absolute legislation, and this regulation is guided by what is reasonable under the circumstances. To determine what is reasonable in any given case is a matter of investigation and judgment. . . . The reasonable rate of interest and profit can, perhaps, be said to be a rate that closely approximates the returns that are received upon capital invested on other undertakings where the risks involved and other conditions are similar.[1]

(2) It is in reality only a corollary of the principle above stated that plants so located that under reasonable competition no return at all would exist cannot expect to be allowed under regulation rates high enough to yield a profit.

Ordinarily the rate of return or the rates for services that are reasonable to the utility are also reasonable to the consumers. When consumers secure these services at rates that only cover operating expenses, including depreciation and a fair rate of return on the investment, they are obtaining the service at as low a rate as under normal conditions they can reasonably expect. But there may be exceptions to this. There may be utilities which are operating under such conditions that no rates that can be collected from the consumers would be sufficient to meet the above named charges. In fact, such utilities are met with more frequently than might be expected. This unfortunate situation may be due to lack of a sufficient number of customers, to mistakes in construction and excessive cost of the same, and to many other causes. Such utilities, in order to be paying concerns, would require higher rates for their services than their customers are willing to pay rather than forego these services, and the collection of such rates is of course out of the question. Utilities of which this is true cannot be subject to any general rules. They can be dealt with only in the light of the conditions which surround them.[2]

[1] Menominee and Marinette Light and Traction Company, iii, 778, 793.

[2] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 625.

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(3) The third proposition laid down by the commission is not out of harmony with the others. The commission moreover finds itself in accord with the principle previously laid down by the United States Supreme Court [1] when it maintains that public interest is paramount to private interest, and that conditions may exist where the utility may be compelled to continue in operation even when it does so at a loss. Thus the commission says:

> There may be conditions under which a public service corporation might be required to operate, even if such operation were attended by financial losses. Public interests are paramount to private interests. But the conditions when such utilities may be required to operate for less than paying rates are in a sense abnormal. . . .[2]

The point at which commissions created for the purpose of regulating public-utility enterprises have hitherto erred more often, perhaps, than at any other, has been in their failure properly to reward efficiency in management by higher returns. Not that such increased efficiency should be capitalized by the company; for in case a period of inefficient management followed, the higher rate schedule, at one time justifiable, might cease to be so. Under competition the entrepreneur automatically secures increased profits as a result of economies in management, added good will and so forth. In the case of an unregulated monopoly, profits are due, primarily, to control over the supply rather than to efficiency of management, especially if its products or services are necessities. Under a regulated monopoly, however, the reward of efficiency is a more difficult matter. In Wisconsin provision is made for it, both by the law itself and by the practice of the commission. The law provides for the creation of a sliding scale of charges, should any utility choose to adopt it.[3] The commission, on the other hand, is loath to reduce the charges of a company if its management is efficient and its service good, provided of course the charges are

[1] *Cf.* Knoxville Water Company case, 212 U. S. 370 and elsewhere.

[2] Dodgeville *v.* Dodgeville Electric Light and Power Company, ii, 302, 414. *Cf.* also Rib Lake Land Company *v.* Upham Manufacturing Company, i, 739, 754.

[3] Laws of 1909, chap. 499, sec. 1797m—17.

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not absolutely unreasonable. Thus in the case of Payne *v.* The Wisconsin Telephone Company, the commission used the following words:

> The petition . . . alleged, in substance, that the defendant company had raised its schedule of charges [at its Marinette plant] several times in recent years; that it had announced a further increase to date from August 1, 1907. . . . In view of all the circumstances . . . we believe it to be better public policy, in the long run, to leave the present prosperous condition of the Marinette exchange as well as the present rates undisturbed for the time being, and to watch closely the conduct of the business and the results of the operation of the exchange in the future. . . . Regarding the character of the service, it must be assumed that the company will not only maintain the present rate of service but . . . will improve it whenever possible.[1]

A final element which has considerable weight with the Wisconsin commission in the allotting of rates of interest and profits is the kind of utility in question. The risk involved varies greatly, and the interest and profits rates should in justice to the companies vary accordingly. Though no general rule can be laid down, it may be said that, on the whole, the commission considers water-works plants as the safest; then follow gas and electric concerns; while the telephone business is the least stable of all. Regarding water works, the commission says:

> Of public utilities as a whole, water works plants undoubtedly are of the most durable and permanent character. They have perhaps been confronted with the smallest problems so far as changes and improvements in production are concerned, with the possible exception of the filtration problem, which the Fond du Lac Company has never been compelled to meet.[2] . . . As water works, generally speaking, are among the safest of undertakings when once they have reached a paying basis, safer, in fact, than most other local utilities, the speculative gains therein should be comparatively low.[3]

Gas and electric plants are characterized as less safe. "Owing to the almost unparalleled progress in the electrical field,

[1] Payne *v.* Wisconsin Telephone Company, iv, 1, 3, 70.

[2] *In re* Fond du Lac Water Company, v, 482, 507.

[3] Hill *v.* Antigo Water Company, iii, 623, 761.

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there are few of the older plants now in existence that have not had to be rebuilt, or reëquipped several times."[1] The gas companies however, assert a greater element of risk than the commission is always willing to allow. The companies lay considerable emphasis upon such factors as the possibility of piping natural gas from distant points, progress in the art, the difficulty of recalling and placing elsewhere money invested in such enterprises in case the undertaking proves a losing venture, the impossibility of suspending the operation of the plant without excessive loss in case of emergencies, and other similar factors. The commission, however, says:

> While the investors in gas and electric light plants are exposed to certain hazards or risks, these risks, while greater than the risks which obtain for money placed, say, in trust companies and good mortgages, are not on the whole as great as those which obtain in ordinary competitive enterprises.[5] . . . As gas and electric plants, generally speaking, may be regarded as fairly safe enterprises, especially after they once have reached a paying basis, safer in fact than many competitive undertakings, the speculative gains in the former should also be measured by a lower standard than those which prevail for the latter. While this is true as a general proposition, it does not apply in every case, nor is it always the view investors take of it.[2]

In the telephone business, finally, the commission finds that the risk is the greatest, that interest charges are correspondingly higher, and that the element of speculative gain is present to a larger degree. The factors chiefly determinant are clearly analyzed in the following paragraphs:

> These variations apparently show considerable instability in the telephone business. This instability is probably due more to necessary changes in and external damages to the physical plant than to instability inherent in the character of the business itself. In fact, some statistics have been compiled tending to show that during the recent crisis telephone investments fared better than most others. Many telephone companies not only held their own at a time when most other industrial enterprises were suffering, but actually increased both their

[1] *In re* La Crosse Gas and Electric Company, ii, 3, 16.

[2] State Journal Printing Company *v.* Madison Gas *etc.* Company, iv, 501, 632, 647.

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gross and net earnings. This has been attributed to a number of causes, one of the chief of which is said to be the substitution of the telephone for personal conferences and traveling salesmen, the latter being dispensed with, whenever possible, when severest economy must be practised in the business world. It would appear, therefore, that the telephone business may possibly be more stable than most other enterprises during a crisis.

Even though the patronage and revenues of a telephone company remain stable and business increase in times of depression, the telephone business, in the present state of the art, nevertheless remains a business subject to great risks and uncertainties. It may be only a few years more before large parts of the existing plants will be discarded because of better service which new inventions can afford. There are those who believe that the manual central energy system will give way to the automatic, just as the magneto board was displaced by the common battery board. If these things should transpire, the company will be in need of the "margin" of which the supreme court speaks, and the telephone users of Marinette will then be as much interested in this margin as the company. . . . Furthermore, the damage which storms can inflict makes the telephone business peculiarly precarious. This is well illustrated by the effects of the storm which visited a part of the state . . . in January, 1909.[1]

In conclusion, a word may be added as to the relation between municipally and privately owned plants, as viewed by the commission. In the main, the same principles hold in both cases. In the words of the commission: "There does not seem to be any valid reason why the principles applied in the case of private corporations should not obtain in the case of municipal corporations, except, perhaps, with respect to the actual rate of interest to be allowed on the investment."[2] The reason why a lower rate may be allowed to municipal corporations is thus stated:

As to the rate of interest to be allowed, there is reason for making distinction between privately and publicly owned utilities. If the same rate of return were to be allowed, other things being equal, the consumer would hardly have any advantage in taking service from a

[1] Payne *v.* Wisconsin Telephone Company, iv, 1, 66, 67.

[2] Dick *v.* Madison Water Commissioners, v, 731, 745.

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municipal plant. But a difference in the rate of interest will give him all advantage, outside of other considerations. The city pays from three and one-half to four per cent interest on the bonds issued to cover the water plant. A private plant would demand at least six per cent or more.[1]

It might seem at first glance that where the utility is publicly owned the item of interest (and of taxes as well) might be eliminated. Such, however, is not the case. They may appear in a different form, but they cannot be wholly absent.

In estimating the cost for municipal as well as for privately owned plants, it would seem to be necessary to take into consideration the operating expenses, depreciation, taxes, and interest on the investment. Operating expenses, including depreciation, are always present and must be actually met, no matter by whom the plants are operated. Taxes and interest charges may, in a sense, be dispensed with for municipal plants. That is, neither taxes nor interest may be actually assessed against such plants. On the other hand, taxes and interest charges are present in some form in all industrial activities. Water works represent property that is of value and in which money has been invested. They constitute a part of the capital of the city. If such items as fixed charges are not considered by municipal plants in fixing rates for private consumers, it would seem that these consumers would be favored as against the tax-payers. There does not on the whole appear to be any equitable ground upon which such charges can be entirely eliminated in any industry or in connection with the services of any public utility.[2]

Such in brief is the position of the Wisconsin commission on the question of profits and interest. It has been given largely in the words of the commission itself, for a better statement, and a fairer, could scarcely be made. Details have been eliminated or abbreviated, and comment is reserved for a future occasion. The opinions above set forth are of interest, not alone because of the advanced position which they represent, but because they illustrate the practical application of an economic theory to the problems of the business world.

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[1] Dick *v.* Madison Water Commissioners, v, 731, 745.

[2] *In re* Application of Madison City Water Works, iii, 299, 320.

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THE BRITISH NATIONAL INSURANCE ACT[1]

THE National Insurance Act passed in the parliamentary session of 1911 differs from any legislation previously on the British statute book in one essential and in at least two incidentally important particulars. It was passed, as Mr. Lloyd George states in his preface to Mr. Chiozza Money's *A Nation Insured*, "with the hope of reaching a new stage in the organization of the resources of the state for the welfare of the least as well as of the greatest of its members"; and it is consequently the most daring and comprehensive social legislation ever enacted in any Anglo-Saxon country. Its framing and also its passage through its various stages in the House of Commons were by methods for which there were no exact precedents; and after its enactment methods hitherto not used were brought into service by the Asquith government, and by volunteer organizations in sympathy with the government and its social legislation, to make the Insurance Act popularly understood. These new methods—popular lectures, many of them paid for by the government[2]—were necessary, because few enactments

[1] The National Insurance Act, 1911, with the incorporated enactments, full explanatory notes, tables and examples. By Orme Clark, of the Inner Temple. With an introduction by Sir John Simon, K. C., M. P., solicitor-general. Butterworth, London, 1912. 338 pp.

National Insurance. By A. S. Comyns Carr, of Gray's Inn, W. H. Stuart Garnett, of the Inner Temple, and J. H. Taylor, member of the Council of the British Medical Association. With a preface by the Right Hon. David Lloyd George, M. P., chancellor of the exchequer. New York, The Macmillan Company, 1912, 504 pp.

A Nation Insured: The National Insurance Act explained by L. G. Chiozza Money, M. P. With a preface by the Right Hon. David Lloyd George, M. P., chancellor of the exchequer. Third and revised edition. Liberal Publication Department, 42 Parliament St., London, S. W., 1912. 79 pp.

Parliamentary Debates, Session of 1911. Wyman and Son, Fetter Lane, London, E. C.

[2] In the supplementary estimates submitted to the House of Commons in February, 1912, there was a vote of £8050 for lectures and courses of instruction on the Insurance Act; and at a meeting of the Liberal insurance committee at the House of Commons on February 18, at which the Master of Elibank, the chief Liberal whip, presided, it was stated that 4000 meetings, lectures and conferences on the Insurance Act had been arranged in the parliamentary constituencies of Great Britain.

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are more complicated or more crowded with detail, and because no legislation since 1832 (except it be the finance act that imposed revenue duties on tea, coffee and tobacco) directly touched so many of the men and women of England and Wales and of Scotland and Ireland as this social legislation, which is to become operative on July 13, 1912.

The general character of the scheme

It is estimated that under the two schemes embodied in the act—insurance against sickness and invalidity and insurance in seven selected industries against unemployment—over fourteen million men and women will be included. The principal features of the act, as they are described by Mr. Clark, are: (1) it applies to the whole of the industrial population, including the army, the navy and the mercantile marine; (2) insurance is compulsory for all employed persons in receipt of wages or salaries of less than £160 a year; (3) the local administrative machinery—in the main friendly societies and trade unions—is largely in the hands of the insured; (4) the rates of contribution and of benefits are the same for all employed persons, irrespective of their age, if they come into the scheme before July, 1913; (5) the cost is divided among employers, employed and the state, but without any guaranty by the state of the insurance fund; (6) the act does not affect the incidence of the existing liability of employers for accidents, provision being made that benefits under it will not be paid to persons who are rendered incapable of work by accidents for which employers are responsible; (7) it is a complement of the Old Age Pension Act of 1908, in that the greater part of the benefits payable under its provisions will not be given after the insured person has reached the age of seventy; (8) it makes special provision for women at the time of child-birth; (9) it makes a special attempt to deal with tuberculosis; (10) it provides for the preservation of the existing organizations for promotion of thrift—friendly societies and trade unions; (11) besides compulsory insurance, it makes provision for voluntary insurance; and (12) it opens the door to an international scheme of insurance by admitting transfers to and from foreign countries with which special arrangements have been made.

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The scheme, as Mr. Clark shows, is not as wide in its scope as the German scheme, which embodies not only sickness and invalidity insurance but also old-age pensions. He adds:

> The natural consequence is that the German rates of contribution are considerably higher than the British rates. Again in Germany, instead of having the same rates of contributions and benefit, the industrial population is divided into various classes according to the rates of wages they earn. In Germany there is separate machinery for sickness and invalidity, and the state makes no contribution to sickness insurance. Another feature differentiating the British scheme from the German scheme is the extent to which under the British scheme the administrative machinery is in the hands of the insured. Most of these differences tend towards making the British scheme much the simpler of the two. The truth of this assertion is shown by the fact that 115 sections are apparently sufficient for the British scheme, whereas (*absit omen*) the latest revision of the German insurance law contains, it is reported, some 3880 articles.[1]

The parliamentary history of the act

The parliamentary history of the measure that Mr. Clark thus describes goes back to the budget of 1909. There was then an announcement by Mr. Lloyd George, the chancellor of the exchequer, that the government contemplated legislation dealing with sickness, invalidity and unemployment; and at that time a sum of £1,500,000 was ear-marked for sanatoria, now provided for in the act of 1911. There the matter rested until February, 1911, when in the king's speech there was the announcement that measures would be presented to Parliament, "in pursuance of intentions already declared, for carrying out and extending the policy initiated in previous Parliaments by providing for the insurance of the industrial population against sickness and invalidity, and for the insurance against unemployment of those engaged in trades especially liable to it."

Introduction of the bill.—It was May 4 before the legislation thus announced in the speech from the throne was introduced in the House of Commons. In the meantime, the chancellor of the exchequer, with the aid of Mr. Buxton, the president of

[1] Clark, *op. cit.*, p. xxix.

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the board of trade, was busy framing the bill; and it was at this early stage that there was a departure from the usual methods; for questions addressed to ministers in the House of Commons, between February 6 and May 4, indicate that many confidential conferences were held between the representatives of the friendly societies and trade unions and the chancellor of the exchequer concerning the scope and general principles as well as the details of the Insurance Bill. Some of these questions suggested an eagerness on the part of certain trades to be included in the unemployment scheme; and there was in the House an expectant interest in the measure seldom evinced except in the case of legislation of a new character and of wide importance and significance. But the secrets of the bill were almost as well kept as those of an impending budget statement—a fact that accounted for a crowded and eager House on May 4, when Mr. Lloyd George made his exposition of the bill in a speech of nearly two hours' duration. This was at first-reading stage. The general character of the bill has already been outlined above, and its essential details will follow. It is thus unnecessary to attempt to summarize the speech of the chancellor of the exchequer; but passing note may be made of two of Mr. George's statements: (1) a frank admission that the method of paying contributions by stamps—the method by which both employers and employed make their weekly payments to the insurance fund—was copied from the German scheme; and (2) the reason why married women not employed as wage-earners are excluded from all but one part of the scheme:

> Married women are excluded because there is no real test—no way of checking malingering—no real test except medical certificates that are not always conclusive. But 700,000 married women who are workers come into the scheme, and will receive maternity benefits conditional upon their not returning to work for four weeks after child-birth. . . . As to the stamps, that is purely the German system. A workman takes his card to his employer at the end of the week; the employer puts on the workman's fourpence and his own threepence and deducts the fourpence from the wages of the workman, who takes the card to the post office, whence it is transmitted to the central office into which the whole of the money is paid.

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Speeches are usually few at first reading. For most bills this is a formal stage, and even on bills of the greatest importance there are seldom more than two or three speeches. There was, however, a discussion of nearly three hours' duration at first reading of the Insurance Bill. All the speeches were of welcome, indicating approval of the scope and general principles of the measure. For the Unionist opposition, Mr. Austen Chamberlain congratulated the chancellor of the exchequer on laying the "foundation stone of a work which every party desired to see carried to a successful conclusion." Moreover, Mr. Chamberlain promised the help of the opposition "not merely in furthering the consideration but in the ultimate fashioning" of the bill. The coöperation of the Labor party, of which there are forty-two members, was promised by Mr. Ramsey Macdonald, who said of the bill:

> It is a very big thing—a very big thing indeed—not only from the point of view of finance; but from the point of view of its consequences. It is only when one sits down and considers the enormous readjustment of our social relationships involved in the proposals that one can visualize how big the whole thing is. We—the Labor party—may have to disagree with some of the details. We probably shall; but nevertheless we shall not disagree with the chancellor of the exchequer on this point. He has viewed the problem largely and as a whole, and has produced a scheme which touches the problem very generally all along its lines.

Three sittings of the House, on May 24, 25 and 29, were occupied with the second reading of the bill. At the first sitting it was intimated from the opposition benches that, because of a conviction that the bill would confer lasting benefits upon the community as a whole, the opposition was willing to let the second reading pass without dissent. There was a division on the third day on the motion by which the discussion was closured; but the House was not divided on the motion to read the bill a second time. The first intimation from the government as to procedure on the bill was before its introduction, when Mr. Asquith, the premier, in outlining the program of business for the House, expressed a hope that the bill would

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be read a second time before the Whitsuntide recess, and after second reading sent to a grand committee. Before this stage was passed, on May 25, the government announced that it had decided that the bill should be taken in committee of the whole. This resulted in a suggestion from the opposition that it should be referred to a select committee. Mr. Lloyd George, in reply, reminded the House that progress by select committee was very slow. If the bill went to such a committee, it could not be passed through the House of Commons in less than two or three years, and as the government intended to pass the bill in that session it could not accept the suggestion of reference to a select committee. Next came a motion that it be an instruction from the House to the committee of the whole to divide the bill into two parts—sickness and invalidity, and unemployment—and to send the second part to a grand committee. For the government it was insisted that the two parts were so interdependent that the proposal to divide the bill was impracticable; and the motion was negatived by 254 to 165 votes. Before this, during second-reading debate, there had been a suggestion that the sickness and invalidity scheme should be proceeded with and unemployment left over to the next session of Parliament. This was urged because of the lack of time for due discussion in committee of a bill of such enormous detail. Why the government would not accept the suggestion is explained by Sir John Simon, the solicitor-general, in his preface to Mr. Clark's book:

> There is an overwhelming reason of practical convenience why employment insurance and sickness insurance should, if possible, come into force at the same time. It is a necessary condition for receiving unemployment benefit that the unemployed man should be capable of work. On the other hand it is a necessary condition of the receipt of sickness benefit that the man should not be capable of work. If, as was demanded on second reading, sickness insurance is set up in priority to unemployment insurance, the man who is out of work from purely economic causes will be under an inducement to represent himself as ill. If on the other hand, as was urged at third reading, unemployment insurance is set up in advance of sickness insurance, then the man who loses work through ill health will find it to his advantage to

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declare that he is perfectly well. The two halves of the scheme ought to work side by side, and though it is true that Part II at present only applies to certain groups of trades, it is desirable to draw a distinction from the first between the conditions to which the different benefits attach.

Closure by compartments.—The session of 1912 was divided into two parts by the adjournment from August 22 to October 24. During the first part of the session the government adhered to its plan of taking the bill in committee of the whole; and the bill had been thirteen days in committee when the House adjourned. At its reconvening in October, the government departed from this plan. It asked the House to send the unemployment scheme to a grand committee; but it continued the consideration of the sickness and invalidity schemes in committee of the whole; allotted sixteen days to the completion of this stage; and forced the bill through by the use of the method of closure by compartments. A schedule was drawn up setting out the time at which each particular group of clauses must be agreed to in committee, with the result that many clauses were not discussed. These clauses included many amendments introduced by the government. They were merely read and agreed to without consideration or discussion; while scores of amendments put on the order paper by private members were altogether ignored. Much the same method was used at report stage, when new clauses and many more amendments were proposed by the government. Report stage is, of course, taken in the House with the speaker in the chair. Five days were allotted to this stage; and in accordance with the government plan all discussion on the sickness and invalidity clauses was to come to an end on November 30. At that sitting 470 amendments were disposed of in an hour and a half. The process was thus described by the parliamentary correspondent of the *Yorkshire Post:*

> It being then half-past seven, the speaker proceeded to put to the House all the amendments to the clauses contained in Part I standing in the name of the chancellor of the exchequer. The members of the opposition thereupon walked out of the House, amid the jeers of the

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ministerialists. Most of the latter followed after a short interval, very few members remaining to listen to the speaker as he read through the amendments and declared each one carried. After forty minutes of this monotonous work the speaker handed over the task to his deputy, Mr. Whitley. After a quiet hour had been spent in this way there came a sudden interruption. The Labor party challenged a division upon an addition to clause 60, providing that any state grant for the erection of sanatoria should be apportioned between England, Wales, Scotland and Ireland in proportion to their respective populations at the census of 1911. There voted for the amendment 120, against 47; government majority, 73. At 9:5 the guillotine operation was concluded,[1] and the House proceeded to the consideration of Part II of the bill, which deals with employment insurance.[2]

As introduced on May 4, the bill extended to 78 foolscap pages of print. It had been extended to 124 in committee of the whole and grand committee, and, as has been stated already, more new clauses were added at report stage,[3] when the part of the bill that had been dealt with in grand committee as well as the part that had been through committee of the whole came before the House.

The attitude of the opposition towards legislation by these methods—really legislation by cabinet rather than by the House of Commons and the House of Lords—is indicated in the account of the sitting of November 30. Notice of the attitude of the opposition is also taken by the solicitor-general in his preface to Mr. Clark's handbook on the Insurance Act. Sir John Simon writes:

There is a special reason why careful explanation is wanted. Most acts of Parliament, even though they closely affect the daily lives of

[1] The guillotine fell somewhat unequally during the progress of the bill through committee. A certain number of knotty points, including some new clauses, were not discussed at all. *Manchester Guardian*, November 28, 1911.

[2] *Yorkshire Post*, Leeds, December 1, 1911.

[3] The bill was practically redrafted in committee, where over twenty new clauses were added. On report hundreds of amendments were made and eight new clauses were added. The House of Lords made its mark upon the bill, and added a new clause, and finally a "drafting amendment" was made by the Commons on the consideration of the Lords' amendment to the bill. Clark, *op. cit.*, p. vi.

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masses of people, can be and are discussed with intelligence without any very precise knowledge of their minute provisions. Many excellent speeches have been made, for example, about the Workmen's Compensation Act or the Old Age Pension Act by persons who have never studied their clauses; but it is the simple truth that no one can express a well founded opinion about the National Insurance Act without devoting a quite inordinate amount of time and trouble to studying it. . . . No criticism of the national insurance scheme has been more widely repeated than a suggestion that more time should have been found for its consideration before it was passed into law. In point of fact few modern acts of Parliament have occupied more time in discussion and certainly no modern act of Parliament has been more widely discussed. True it is that there will be many important improvements to be effected. We have already amended the Old Age Pensions Act once, and may have to do so further. Amendments of the National Insurance Act are quite certain as soon as we know where the shoe pinches. But before you can know where the shoe pinches, you have to make up your mind to wear it.

Change in the attitude of the opposition.—At first and second reading, as will be recalled, there was no opposition to the bill. But at third reading Mr. H. W. Forster, for the Unionist opposition, moved what in the history of the bill has become known as a "reasoned amendment." It was as follows:

That while approving the objects of national insurance, this House is of opinion that under Part I of the bill public funds and individual contributions will not be used to the best advantage of those most closely affected, and that as the bill has neither been adequately discussed in this House nor fully explained to the country, and would in its present form be unequal in operation, steps should be taken to enable further consideration of Part I to be resumed next session, and in the meantime to have the draft regulations published.

It was claimed that this was a wrecking motion. According to Mr. Forster:

It was a demand to which the government might accede without loss of prestige—a demand which if granted would lead to a great improvement in the bill. . . . The opposition approved the principle of national insurance. The great value of the bill was not what it was going to do as a remedial measure, but that it was going to compel

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them to face problems which they would not have faced if it had not been introduced.

The most significant part of the speech of the chancellor of the exchequer in reply to Mr. Forster was his defence of the methods by which the bill had been carried in committee and at report stage. Alluding to the interjection of a member of the opposition as to the use of the guillotine, he said:

I admit that if we were to have discussed the bill under ordinary conditions it is quite conceivable that it could not have been disposed of in a year. At the rate we were progressing before the guillotine resolution it would have taken not merely the whole of the autumn session but the whole of next year. We have had our guillotine, and I venture to say that there is not a single vital matter in the whole bill that was not debated. What are the vital matters in the bill? The compulsory character—that was debated without the guillotine. The classes to be included—that was debated. The contributions—that was discussed three times. Finance—we discussed it on three days. The machinery of the bill was discussed. The approved societies and the post-office contributors were discussed; and they were so discussed that although the guillotine fell at 10:30 the debate was over between 8 and 9. Then the doctors were discussed; and they were not under the guillotine at all. If you look at the bill you will see that there is no question of vital importance that was not discussed. It is said that we passed eighteen clauses under the guillotine. Let us look at those clauses. There is not one of them that had not been debated previously, and there was no new principle at all involved in any of them. Therefore I venture to say that if you were to have it at all there was no guillotine that ever operated more fairly than the guillotine under this bill.

On a division the Forster amendment was rejected by 320 to 223 votes. The third reading of the bill was then moved. Before the House divided many opposition members and several of the Labor members walked out, and while 543 members had voted in the first division only 345 voted on the third reading: 324 for, 21 against. Second reading was taken in the Lords December 11. Only one day, December 14, was devoted by the Lords to committee stage. Third reading came on December 15; and on December 16 the Insurance Bill, which had been before Parliament since May 4, received the royal assent.

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Insurance against sickness and invalidity

New administrative organizations.—There are so many references in the Insurance Act to the machinery by which it is to be worked that it seems expedient before summarizing its details to describe the organizations that have been created to administer it. The act throws much new work on the treasury at Whitehall, on the local government board, on the board of trade and on the postoffice. It also creates nine new organizations, two of them central, most of them local. These are:

(1) Boards of insurance commissioners for England, Wales, Scotland and Ireland, appointed by the treasury, and with large delegated powers.[1]

(2) A joint committee of the insurance commissioners, a body representing all four boards, empowered to make adjustments between the four parts of the United Kingdom.

(3) An advisory committee for each board of commissioners, and a committee appointed by each board to advise and assist in making regulations—this committee to represent associations of employers, friendly societies and trade unions and associations of medical practitioners, and to have at least two women as members.

(4) Approved societies, which means any society registered or established under act of Parliament, or if not so registered a society that has a constitution of such a character as may be prescribed for transacting insurance under the act. All *bona fide* friendly societies, collecting societies, trade unions and employers' provident funds may be brought into the scheme as approved societies, except that no society can be approved that is carried on for profit, or unless its constitution provides for the absolute control of its affairs by its members to the exclusion of honorary members. These are the societies that are to administer sickness, invalidity and maternity benefits for insured persons who are members of approved societies. In order to come into the scheme a society must (*a*) give security against malversation by its officers; (*b*) keep its accounts under the Insurance Act quite separate from the accounts of any other

[1] A summary of these powers in Mr. Clark's book runs to eight pages.

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business it may be doing; and (*c*) submit to having its assets and liabilities valued every three years, or at such other times as the insurance commissioners may appoint.

(5) Associations of small approved societies of less than five thousand members—associations created to ensure the financial stability of the smaller societies.

(6) County councils in Scotland and Ireland—the popularly elected bodies charged with the administration of county government—may be recognized as approved societies to deal with employed contributors resident in a county who are not members of an approved society.

(7) Insurance committees, constituted in every borough and every county borough to administer sanatorium and maternity benefits and to administer all benefits—sickness, invalidity and maternity—in the case of contributors who make their weekly payments through the post offices. These committees are empowered to provide institutional or other treatment for persons entitled to sanatorium benefit; to give lectures and to publish information on matters relating to public health; and to consult local medical committees on all general questions affecting the administration of medical benefits.

(8) District insurance committees. These are to serve in urban communities—small boroughs and urban district council areas—in which the population is less than in the communities for which insurance committees are created.

(9) Local medical committees, representing the medical practitioners in the areas for which they are created. The functions of these committees are to advise insurance committees on all questions affecting the administration of medical benefits and to exercize such other powers as may be determined by the insurance commissioners.

Classes included.—The insured under this part of the scheme, in which provision is made for cases of sickness and invalidity, are, generally speaking: (1) all persons, whether British subjects or aliens, male or female, married or single, between the ages of sixteen and sixty-five, who are engaged in manual labor under any contract of service or apprenticeship, written or oral, whether expressed or implied, whatever their incomes

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may be; and (2) all persons engaged in work other than manual labor whose incomes do not exceed £160 a year. Outworkers—even cab and taxicab drivers—are included. So are all casual laborers, where the labor is for the purpose of the employer's trade or business, or for the purpose of gain or recreation.

The more important exclusions are: (1) men and women in the service of the crown or of public authorities and in other employments where the terms of service are such as to secure, in the event of sickness and disablement, provision on the whole not less favorable than the corresponding benefits under the Insurance Act; (2) partly employed agents—men and women mainly dependent on some other occupation; (3) farmers' sons working on their fathers' holdings who are maintained by their fathers; (4) members of crews of fishing vessels who are remunerated by shares; (5) wives employed by their husbands and husbands employed by their wives; and (6) persons in an employment of such a nature that it is ordinarily adopted as a subsidiary employment and not as a principal means of livelihood.

The population of the United Kingdom in 1911 was 45,368,675; and it is estimated that in the first year of the operation of the act (1912–1913) 13,089,000 men, women and young persons will be brought into the class described as employed contributors. The number of voluntary contributors is estimated at 829,000. To be a voluntary contributor, a man must be engaged in a regular occupation on the earnings from which he is mainly dependent, and his income from all sources must not exceed £160 a year. Under the existing Finance Act, incomes below £160 a year are not chargeable with income tax, and the principle on which the Insurance Act is based excludes from its benefits all who pay income tax.

Two methods of coming within the insurance scheme are open to both voluntary and employed contributors. They may (1) become members of approved societies, or (2) they may become deposit contributors. Societies have a discretion in accepting or rejecting applicants in accordance with their existing rules, but no applicant may be rejected on the ground of

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age. No person can be a member of more than one approved society. Deposit contributors make their payments through the post office. These contributors cannot draw more than the total they have paid in plus the state contribution made in their behalf; and when once a person has exhausted the sum standing to his credit, he can receive no more benefits until his account is replenished.

Rates of contribution.—Except in special cases, the rate for employed contributors is sevenpence a week for men, sixpence a week for women. Of this sum the employer pays threepence a week, while the contribution of the employed is fourpence for a man and threepence for a woman. There are lower rates when the wage does not exceed 2*s.* 6*d.* a day. The following table[1] sets forth the rates according to sex, age and wages:

CONTRIBUTIONS FOR A MALE WORKER (PENCE PER WEEK).

AGE AT ENTRY AND WAGE	WEEKLY CONTRIBUTION BY			STATE'S SHARE OF COST OF BENEFITS	TOTAL
	WORKER	EMPLOYER	STATE		
If not over 21 years:					
All wages	4	3	—	2	9
If over 21 years at entry:					
Wages over 2*s.* 6*d.* a day . . .	4	3	—	2	9
Wages 2*s.* 0*d.* to 2*s.* 6*d.* a day.	3	4	—	2	9
Wages 1*s.* 6*d.* to 2*s.* 0*d.* a day.	1	5	1	2	9
Wages not over 1*s.* 6*d.* . a day.	0	6	1	2	9

CONTRIBUTIONS FOR A FEMALE WORKER (PENCE PER WEEK)

AGE AT ENTRY AND WAGE	WEEKLY CONTRIBUTION BY			STATE'S SHARE OF COST OF BENEFITS	TOTAL
	WORKER	EMPLOYER	STATE		
If not ever 21 years:					
All wages	3	3	—	2	8
If over 21 years at entry:					
Wages over 2*s.* 6*d.* a day. . .	3	3	—	2	8
Wages 2*s.* 0*d.* to 2*s.* 6*d.* a day.	3	3	—	2	8
Wages 1*s.* 6*d.* to 2*s.* 0*d.* a day.	1	4	1	2	8
Wages not over 1*s.* 6*d.* a day .	0	5	1	2	8

[1] Chiozza Money, *op. cit.*, p. 18.

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There are special rates for Ireland, where wages have always been lower in most industries than in England and Scotland. There the contribution for men is fivepence-halfpenny; for women, fourpence-halfpenny; and for both men and women the employer's contribution is twopence-halfpenny—making the contribution by the men threepence and by the women twopence a week.

Collection of contributions.—Payment of all contributions is made by stamps, in the way described by Mr. Lloyd George in his speech of May 4. An employer pays his employee's contribution and has the right to deduct this payment from wages; but should he also deduct his own contribution from wages he is liable to a penalty. He is also liable to a penalty, not to exceed £10, if he fails to make his own contribution. Contributions are payable weekly, and arrears are calculated on a yearly average of weekly contributions. Persons who get into arrears when out of work are enabled to work off their arrears gradually when they again obtain employment, and as they pay them off they become entitled to an ascending scale of benefits according to the schedule of the act. This schedule is so framed that arrears of less than four contributions a year on an average entail no reduction of benefits.

Arrears do not accrue: (1) when a person is incapable of work, but is disqualified by some provision of the act from receiving sickness or disablement benefit; (2) in case of a woman who is herself an insured person—a woman who is at work for wages and is therefore entitled to maternity benefit—during two weeks before and four weeks after child birth; (3) during twelve months after the commencement of the operation of the act in the case of all employed contributors; and (4) in the case of widows who had been insured before marriage during the time that they were married. These women come on the insured list again if they become wage-earners. During marriage the ordinary benefits are suspended unless the women continue as wage-earners; and married women who are not wage-earners are, moreover, precluded from becoming voluntary contributors. Provision is made, however, whereby married women who have been members of approved societies may become

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special contributors on ceasing to work for wages. These special contributors will pay a reduced rate of threepence a week, and will be entitled only to medical benefit and sickness and disablement benefit on a reduced scale.

Aliens, soldiers and sailors.—Alien wage-earners must be insured, and aliens who possess the necessary qualifications may become voluntary contributors. Under the following conditions aliens are treated as British subjects: (1) if on May 4, 1911—the date of the introduction of the bill—they were members of a society that becomes an approved society, and if they have been for five years residents of the United Kingdom; (2) if they have been transferred to the scheme in pursuance of arrangements made with the governments of foreign states; and (3) if they are of the age of sixteen but have not attained the age of seventeen. Aliens who do not come within these three categories will be entitled to reduced benefits; and no part of these benefits will come out of the contributions of the state to the insurance fund.

Soldiers and seamen in the royal navy all come within the scheme. During the time of their service they are to pay reduced contributions, and until their discharge only maternity benefits will be paid in consideration of their contributions. But the scheme as regards them is so arranged that when they leave the army or the navy and become wage-earners they can insure on as favorable terms as if they had previously been civilians. There is also created a navy and army insurance fund, with special benefits for men who on leaving the service are in such a condition of health that they cannot obtain admission to an approved society; and this fund is to be available whether men have served abroad or in the United Kingdom.

For the mercantile marine the rate of contribution is reduced to sixpence, of which the employer pays twopence and the seaman fourpence. There are no sickness or disablement benefits for seamen during the time that their employers are compelled by the Merchant Shipping Act to provide them with medical treatment and maintenance. In connection with this part of the scheme—a part that applies to all ships on the British register—a seaman's national insurance society is established, to

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which all persons serving in the mercantile marine are entitled to belong. By this society pensions will be paid from contributions by ship-owners and seamen. Only British seamen are to be insured under this part of the scheme; "but," adds Mr. Chiozza Money, "in order that foreign seamen shall not therefore obtain a preference in employment, the ship-owner will have to contribute to the fund for the foreign as well as for the British seamen who are benefited by it." [1]

Benefits.—Persons insured under the sickness and invalidity scheme are entitled to four distinct benefits: medical, sickness, invalidity and maternity. They have also a claim but not a right to sanatorium benefit.

Medical benefits are administered by the insurance committees, part of whose duty it is to arrange with doctors to treat insured persons. The insured has the right to choose his own doctor, and any doctor has the right to refuse to treat any given person. The insurance committees prepare and publish lists of doctors who agree to work under the scheme. Any doctor has a right to have his name included in the list, and no doctor's name may be removed from the list except after inquiry. Insurance committees have the power to fix an income limit above which they may require insured persons to make their own arrangements for receiving medical attendance and treatment.

For sanatorium benefit—benefit for persons suffering from tuberculosis and such other diseases as the local government board with the approval of the treasury may designate—recommendations must be obtained by insured persons from the local insurance committees. Persons so recommended will receive these benefits, if necessary, throughout life. The benefits may be institutional, or they may take the form of home treatment. Except that poor-law institutions are specifically excluded, any institutions may be made use of in the administration of sanatorium benefits; "and any persons or local authorities may give the treatment, provided that both institutions and persons are approved of by the local government board."

[1] Chiozza Money, *op. cit.*, p. 25.

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The payments of sickness and invalidity benefits are not uniform. They vary according to the sex and age of the persons insured, and in the case of minors a distinction is made between the unmarried and the married. These benefits are set out in detail in the following table, taken from Mr. Chiozza Money's book.

TABLE OF SICKNESS AND INVALIDITY BENEFITS

PAYABLE FROM FOURTH DAY OF SICKNESS

	FIRST 13 WEEKS	SECOND 13 WEEKS	DISABLEMENT PENSIONS [1]	FIRST 13 WEEKS	SECOND 13 WEEKS	DISABLEMENT PENSIONS [1]
AGE [2]	MEN			WOMEN		
	s. d.	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*
Over 21 and not over 50	10 0	10 0	5 0	7 6	7 6	5 0
Over 50, if paid 500 contributions	10 0	10 0	5 0	7 6	7 6	5 0
Over 50 and not over 60, if not paid 500 contributions	7 0	7 0	5 0	6 0	6 0	5 0
Over 60	6 0	5 0	5 0	6 0	5 0	5 0
AGE [3]	BOYS			GIRLS		
Over 16 and not over 21 (unmarried)	6 0	5 0	5 0	5 0	4 0	4 0
Over 16 and not over 21 (married)	10 0	10 0	5 0	7 6	7 6	5 0

If sickness continues longer than twenty-six weeks, 5*s.* a week is paid during the remainder of the sickness, however long it may be. Thus the position of a man or woman of whatever age, old or young, who is incapacitated by illness, is made the same as that of an old-age pensioner. But an insured person must have contributed for two years before the permanent disablement benefit is available. The disablement pension ceases at the age of seventy, when the provisions of the Old Age Pensions Act become applicable.

[1] For life or until the age of seventy.

[2] Age here refers, not to age when taking benefit, but to *age on entering insurance.*

[3] Age here refers to *age at making claim.*

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The maternity benefit—a sum of 30*s.* in cash or in kind—is payable in respect of wives of insured men, although the women themselves may not be insured under the scheme; but if a woman is an employed contributor—a regular wage-earner—she will receive sickness as well as maternity benefit, whether her husband is insured or not. There are about 1,200,000 births in the United Kingdom every year, and Mr. Chiozza Money estimates that something like one million of the mothers will receive the benefit. He adds:

> Never before has so generous a maternity scheme been devised in connection with national insurance. Thus the German state insurance, excellent as it is as a whole, hedges the maternity benefit about with so many restrictions that the expenditure upon it, for a population half as great again as ours, is only about £300,000 a year.[1]

Mr. Money's estimate of the cost of the maternity benefit under the British scheme is £1,500,000 a year.

Investigations into causes of excessive sickness.—The local government board, on application by the insurance commissioners, by an insurance committee or by an approved society, is authorized to order inquiries into the causes of any excessive sickness, with attendant heavy calls on the insurance fund, in any locality. Tables are to be prepared by the insurance commissioners of normal sickness rates; and any sickness which exceeds the tabulated rate by ten per cent is to be considered as furnishing good ground for application for an inquiry. If it is then found that excessive sickness is due to the failure of a local government authority to perform any duties imposed on it by any of the acts relating to the health of workers in factories, workshops, mines or quarries or the public health or the housing of the working classes, or if it is found to be due to insanitary conditions in any locality or an insufficient or contaminated water supply for which the municipal authority is responsible, then any extra expenditure which may have been incurred by approved societies by reason of the excessive sickness may be recovered from the municipality. Where bad

[1] Chiozza Money, *op. cit.*, p. 25.

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housing or insanitary conditions are proved to be the cause, the municipal authority may recoup itself from the owners of the property to whose acts or defaults the excess expenditure may have been due. Water companies, employers of labor and owners, lessees and occupiers of property are all made liable under the sections of the act aimed at the elimination of the causes of excessive sickness.

Insurance against unemployment

All the central machinery for the second part of the scheme —unemployment insurance—is in the board of trade at Whitehall. The board will make all regulations, and with the sanction of the treasury it can by special order extend the scheme to additional industries. The seven industries that come into the scheme at once are: (1) building, (2) construction work, (3) shipbuilding, (4) mechanical engineering, (5) iron founding, (6) construction of vehicles and (7) saw milling. It is estimated that 2,511,500 men in these industries will come under the scheme during the first year of its application. In this total, workpeople under the age of sixteen and foremen, apprentices and clerks are not included, as the scheme has not been made applicable to these employees. The compulsory contributions of workmen coming within the scheme—contributions in addition to those made by these men to the sickness and invalidity fund—are tabulated as follows by Mr. Chiozza Money:

COMPULSORY CONTRIBUTIONS TO UNEMPLOYMENT INSURANCE (PENCE)

AGE AND PERIOD OF EMPLOYMENT	EMPLOYER	WORKMAN	STATE	TOTAL
	per week	*per week*	*per week*	*per week*
For workmen 16 to 18	1	1	0⅔	2⅔
For workmen over 18:				
When employment is for a week, or for more than two days	2½	2½	1⅔	6⅔
	per day	*per day*	*per day*	*per day*
When employment is for two days or less.	1	1	0⅔	2⅔

Payments are made by stamps, as under the sickness and invalidity scheme. They will be recorded in an insurance book

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—one for each insured workman—and in this book will be entered the payments made to the insured from the insurance fund as well as the weekly payments of the workman and his employer to that fund. Supporters of the government, when the bill was before Parliament, combated the assertion that the whole charge of insurance—workman's quota and employer's quota—would ultimately become a charge on the workman; and Mr. Chiozza Money takes the same view in describing how the payments will be made:

> At the end of each week the employer will stamp this insurance book with a fivepenny insurance stamp bought at the post office, and he will pay the workman his wages less twopence halfpenny. The workman will be reminded by the employer stamping the book with a fivepenny stamp—representing twopence halfpenny for the worker and twopence halfpenny paid by the employer—of the fact that the unemployment insurance scheme, like the sickness insurance scheme, is not really a deduction from wages but an addition to wages.[1]

There is not the same certainty as to the exact payments under the unemployment scheme as there is under the sickness and invalidity scheme. Working upon the best data available, Mr. Chiozza Money has come to the conclusion that the rates of contribution will be sufficient to provide: (1) for unemployed workmen over eighteen years of age, payments at the rate of 7*s*. a week up to a maximum of fifteen weeks in any twelve months; and (2) for workmen from seventeen to eighteen years of age, 3*s*. 6*d*. a week up to a maximum of fifteen weeks in any twelve months. Trade unions and labor exchanges constitute the local machinery for working this part of the scheme. Details concerning disqualifications for benefit under the unemployed scheme can not be given within the space assigned for this article; but note should be taken of the fact that concessions and advantages are offered to employers who in seasons of slackness keep their working forces together.

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[1] Chiozza Money, *op. cit.*, p. 67.

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THE MEXICAN REVOLUTION: ITS CAUSES AND CONSEQUENCES

ON the 28th of November, 1876, Porfirio Diaz, as leader of a revolutionary movement against President Sebastian Lerdo y Tejada, declared himself provisional president of the Mexican republic. The main purpose of this movement[1] was to uphold the principle which had been violated by President Lerdo y Tejada, namely, that an outgoing president should not be eligible to reëlection. On the 25th of May, 1911, Porfirio Diaz resigned the presidency of Mexico, yielding to the pressure of a revolutionary movement, the leading principle of which was the same as that for which General Diaz fought in 1876, namely, the non-reëlection of the president.

During the thirty-four years which elapsed between 1877 and 1911, Mexico emerged from a condition of political anarchy, social disruption and economic stagnation into a well-organized, consolidated and progressive modern state. In less than a generation General Diaz succeeded not only in establishing order throughout the territory of the republic but also in bringing about a degree of economic advance which aroused the astonishment and admiration of the civilized world.

Why is it, then, that at the close of this period of development, when law and order seemed permanently assured throughout the republic, when the government seemed more firmly established than ever before, there should burst forth a revolutionary movement, formidable not so much because of the numbers that participated therein as because of the overwhelming force of public opinion which came to its support? In marked contrast with most revolutions that have taken place in Mexico, or for that matter in Latin America, the uprising against the Diaz government was exclusively civilian. The federal army remained loyal throughout the contest. The leaders of the revo-

[1] The principles for which Diaz stood were formulated in the famous "Plan of Tuxtepec."

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lutionary forces were men most of whom knew absolutely nothing of modern military tactics. The real strength of the revolutionists lay not in their numbers or equipment, but in the fact that they had the open support or secret sympathy of the masses in the sections in which they were operating, especially in the states of Chihuahua, Coahuila, Sonora and Durango. An impartial eye-witness to the struggle,[1] in speaking of the position of the commander of the federal forces at Ciudad Juarez, points out the disadvantages under which the federal leaders were laboring by reason of the fact that the inhabitants of the region were in open or secret sympathy with the insurrection and were unwilling to give information as to the whereabouts of the insurgents or any other helpful data with reference to conditions in the districts through which the federal forces passed.

In order to understand the real significance of the revolutionary movement, it is necessary to examine two distinct sets of causes which contributed to its success, the one fundamental and basic, the other proximate but secondary. Unless the forces engendered by both series of causes are taken into account, the downfall of the Diaz government remains a mystery. It must be borne in mind that as late as March, 1911, even the members of the cabinet of General Diaz did not regard the situation as serious, and at that time the resignation of the president was not given a moment's thought. Not even Mr. Limantour, when he arrived in Mexico City in March, 1911, to take up the negotiations with the insurgent leaders, was aware of the fact that the revolutionary movement was supported by a force even more powerful than the arms of the insurgents, *viz.* a strong body of public opinion, which for the first time in the history of Mexico had reached national proportions, and before which even so powerful a government as that of President Diaz first hesitated, then tottered, and finally fell without showing any real power of resistance.

[1] Toribio Esquivel Obregon, who endeavored to bring about a settlement of the differences between the government and the revolutionists. Mr. Obregon has published a pamphlet entitled Democracia y Personalismo (Mexico, A. Carranza hijos, 1911), which contains an interesting account of the negotiations.

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Viewed in this light, the triumph of the revolution was not the triumph of any small faction of ambitious political or military leaders, but the expression of a genuine popular feeling, which, repressed for a generation, burst forth with a force which not only dumbfounded the members of the government but surprised even the leaders of the movement.

What were the causes of this revulsion of popular feeling against President Diaz? How did it come to pass that the man who was the idol of the people of Mexico for so long a period seemed suddenly to lose his hold on their affection and that the demand for his resignation resounded in almost every section of the country? In order to give a satisfactory answer to this question it is necessary to examine the leading policies of his government.

Although he never openly acknowledged the fact, General Diaz clearly recognized that the Mexican constitution was far in advance of the political capacity of the people. The fact that he was of Indian blood and thoroughly understood the mental attitude of every class of Mexican society made it comparatively easy for him to realize that the country was in a stage of development in which it was undesirable that the energies of the people should be absorbed in political conflicts. He was aware that in Mexico political beliefs soon acquire the dignity of religious creeds, and that the class and factional antagonisms resulting from this attitude toward political platforms were a real obstacle to the economic and social progress of the country. He realized that the long and almost unbroken tradition of anarchy and civil strife, which began at the dawn of the era of independence, had bred in the nation a spirit of resistance to all authority and a lack of respect for law and order which could be brought under control only by means of a strong government, sternly and almost ruthlessly suppressing every outbreak of lawlessness. The enforcement of this policy carried with it, as a logical consequence, the discouragement of all popular political activity.

In his estimate of the needs of the country, General Diaz reached the conclusion that the primary requisite was the development of greater industrial efficiency amongst the masses

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of the people. As an integral part of this plan, he initiated the policy of encouraging the utilization of the country's natural resources through the investment of foreign capital. His immediate predecessors, even such enlightened statesmen as Juarez and Sebastian Lerdo y Tejada, had shown great distrust of foreign investments, owing to the fear of complications with foreign governments. President Diaz, however, realized that the social advance of the people was dependent on the industrial development of the country. His efforts were therefore directed toward this end with a singleness of purpose which expressed itself in a spirit of impatience and even of intolerance of anything that might prove an obstacle to the success of this policy. Some one has said that in the execution of this plan he fell into the grave error of mistaking the wealth of the country for its well-being. There is much truth in this criticism. The financial reorganization of Mexico, important as it was, came to be looked upon as an end rather than as a means. It is true that without financial stability further progress was impossible, but, financial stability once attained, the government should have turned its attention to the betterment of the condition of the laboring classes. Owing to the abundance of labor, the great industrial enterprises, both native and foreign, have no real interest in the welfare of their employees. If protective labor legislation has been found desirable in the United States and in the countries of Europe, it is indispensable to national well-being in Mexico, where the low standard of life and the absence of organization place the laboring classes at the mercy of the employers. The fact that agricultural laborers earn but 12 to 20 cents per day, miners from 50 to 60 cents and industrial labor from 40 to 60 cents, is an indication of the low standard of life.

The discouragement of all popular activity in the field of politics was but part of a well-defined plan to concentrate attention on questions of industrial and social progress. General Diaz found the country rent asunder by generations of civil strife, a central government unable to enforce its will in the states and, to add to the difficulties of the situation, a widespread system of brigandage, which had become so serious as to be a

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real obstacle to the economic development of the country. The establishment of order throughout the republic, the development of respect for person and property, the elimination of the spirit of sectional strife and the curbing of the tyranny of petty local bosses—all these presented themselves to him as problems of far greater importance than the participation of the people in elections or the growth of political clubs and associations. This is the keynote to the policy of General Diaz; and judging his work as a whole no one can deny that he rendered the country the kind of service which it required at the time.

It is not my intention to attempt to recount the story of Mexico's progress. My present purpose is to show how General Diaz fell victim to a policy which was justified at the time that it was instituted. As in all cases of autocratic rule, he failed to take into account the political progress of the people. He failed to realize that the nation with which he had to deal in 1911 was different in many respects from that which he found in a state bordering on anarchy in 1876. Although the federal government has no direct control of primary education, except in the federal territories and in the federal district (in which the capital city is located), the central government did everything in its power to encourage the states in the development of primary education. Judged by the standards of public education in the United States, the system of public education to be found in the individual states of Mexico impresses one as woefully inadequate. Nevertheless, if one compares the situation at the present time with conditions ten or fifteen years ago, the evidences of progress are unmistakable. In the field of higher education the federal government was able to exert a greater influence through the professional and technical schools in Mexico City. These schools were instrumental in bringing into the political life of the country a new element—a large number of young men anxious to participate in public affairs, but who found themselves debarred from active participation unless they were willing unreservedly to support the Diaz régime.

The discontent thus fomented was increased by what developed into a most serious abuse. The necessity of destroying

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sectional antagonisms in order to make possible the unification of the country—or at least such a degree of unification as was essential to further progress—led the government to undertake the complete subordination of the states to the federal authorities. It was an open secret that state governors, although nominally elected, were in reality appointed by President Diaz. Even the members of the state legislatures owed their election to the good will of the federal executive. During the early years of the Diaz administration, the people of the states did not suffer by reason of this subordination. In fact, the plan worked to their benefit, for through this policy internal order was assured and both person and property were fully protected. Furthermore, the selection of candidates for the elective state offices was made with considerable care until about 1900. There then begins to be noticeable a change which is the inevitable result of a long period of personal rule. Instead of selecting candidates for the higher state offices because of fitness, personal loyalty to the president became the sole test. In return for this loyalty the state governors were given a free hand. Confident of the support of the central authorities, they abused their power to such an extent as to create widespread discontent, a discontent all the more dangerous because it was not permitted to express itself. The few attempts that were made to protest against this condition of affairs were interpreted by General Diaz as attempts to undermine his power and were ruthlessly suppressed.

The spirit of opposition aroused by the corruption and oppressive measures of the state governors was greatly increased by the tyrannical abuses of the minor administrative officials, especially the so-called *jefes politicos*. These officials are the representatives of the state government in the local administrative districts. Their control of the police force in these districts enabled them to develop a system of intimidation and extortion which weighed heavily on the poorer classes and gave rise to widespread discontent.

The attention of President Diaz was repeatedly called to the dangers of this situation. Two of his cabinet ministers were unremitting in their efforts to secure an improvement of the

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political and administrative condition of the states. He promised, time and again, that the matter would receive his early attention. When finally the pressure of events made action imperative, it was too late. The resentment of the people because of the abuses to which they had been subjected by the state authorities was turned against the president, whom they held responsible for the situation. These abuses in the administration of state and local affairs, while not the most prominent, were the primary causes of the revolution, and explain the support which the movement received in all sections of the republic. It is only by giving due weight to this factor that the tremendous wave of public opinion that swept over the country, demanding the immediate resignation of President Diaz, can be explained.

Another factor that contributed to the downfall of the Diaz government was the bitter opposition which developed among certain elements of the laboring classes because of the attitude of the government toward labor unions and strikes. Although General Diaz always showed a deep interest in the welfare of the laboring classes, this interest was of a purely paternal nature. While prepared to relieve individual cases of distress, he belonged to a school which regarded labor unions as a menace, and which looked upon anything approaching a demand upon employers as a breach of the peace. He failed to appreciate the significance of the industrial awakening in Mexico. The growth of industrial enterprise, especially the large cotton mills in the states of Puebla, Tlaxcala and Vera Cruz, developed a laboring population which was prepared to enter upon a struggle for better housing conditions. General Diaz, during the thirty years of his administration, was accustomed to unquestioned submission to his will. Instead of appreciating the fact that the formation of labor unions was an indication of progress, he looked upon such organizations with great distrust, giving to them political significance and interpreting strikes as a first step toward insubordination to the constituted authorities. The summary arrest and brutal treatment of labor leaders and the use of federal troops to intimidate strikers were the government's answer to the attempt of the laborers in the cotton mills to en-

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force their demands against the employers. The policy of stern repression was interpreted by the workingmen as an indication of a settled purpose on the part of the government to keep them in a condition of hopeless subordination. A feeling of sullen discontent began to spread amongst the industrial workers, which soon took the form of secret opposition to the government of General Diaz.

This feeling began to diffuse itself among the agricultural laborers also, but for reasons of a totally different nature. Mexico is a country of large landed estates. The ignorance and poverty of the mass of the population have prevented the development of an independent farming class, and the special privileges enjoyed by the large landowners have enabled them constantly to increase their holdings. The condition of the agricultural laborer is almost if not quite hopeless. Working from dawn to sunset and earning from 12 to 20 cents a day, his position borders so closely on serfdom as hardly to be distinguishable therefrom. In the northern states of the republic, indeed, a somewhat higher rate of wages had brought about a slight betterment in the condition of the agricultural laborer. This improvement, however, served only to increase the feeling of discontent, for it opened the eyes of the agricultural laborer to new possibilities of economic and social advance.

The agricultural laborer found himself confronted with a situation which practically debarred him from ownership of the soil. During the time of the Spanish conquerors, the distribution of tracts of land in return for military services laid the foundations of the system of great landed estates, which has become a serious obstacle to the advance of the lower classes. The hold of this system on the country was strengthened when, at the close of the struggle between church and state in 1874, the church lands were either sold in great tracts or distributed in return for military or other services rendered to the government during the struggle. To add to the difficulties of the situation, the government committed the mistake of passing, in 1894, a land law, which was heralded as a great advance in legislation, but which soon became an instrument of oppression. Instead of quieting the title to lands to which a pre-

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scriptive right had been obtained through long occupation, the law provided that properties for which the owner could not show legal title might be "denounced" in much the same way as lands of the public domain. The immediate result of this provision was that some of the large landowners who desired to round-out their holdings immediately began dispossessing their weaker neighbors. Another practice often resorted to by the large landowners, in order to increase their holdings, was to enclose the property held in common by the natives on the outskirts of the villages. Although this gave rise to repeated protests, such protests were rarely heeded; and the failure of the government to protect the citizens served to strengthen the spirit of sullen discontent. It is, unfortunately, impossible to secure any statistical data to indicate the encroachments made under the Land Act of 1894 or by the enclosure of common lands. There is no doubt that the statements made immediately preceding the revolution were greatly exaggerated, but it is equally certain that these reports aroused a feeling of distrust in the native population which prepared the way for the anti-Diaz propaganda.

These, then, may be said to have been the primary and fundamental causes which prepared the way for the downfall of Porfirio Diaz. In addition, there were many causes of secondary importance, to some of which undue weight has been attached. Of these, the one which has figured most prominently in all the discussions of the subject was the attempt on the part of President Diaz to designate his successor. When the vice-presidency was reëstablished, in 1904, it was generally assumed that this was a first step toward this end. Those who realized the dangers of the situation pointed out to the president the necessity of allowing a free play of public opinion, in order that a candidate enjoying popular support might be selected. Even those who were dissatisfied with the Diaz régime were willing to accept his reëlection in 1910, provided freedom of choice were permitted in selecting a candidate for the vice-presidency. As the elections approached, however, it became increasingly evident that such freedom would not be conceded, and that the president was bent on forcing upon the country the reëlection of Vice-President Corral. Mr. Corral had

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shown himself to be an efficient administrator, first as governor of the state of Sonora, then as governor of the Federal District and finally as a member of the cabinet and head of the Department of Government. His misfortune was to be backed by President Diaz at a time when the latter's popularity was declining, and when such support was interpreted as a determination to perpetuate the Diaz régime. This alone was sufficient to arouse the antagonism of a considerable element of the population. Furthermore, the fact that he had no military record made his candidacy unpopular with the army, a factor of no mean importance in Mexico. The high-handed measures employed at the elections in 1910 to assure the triumph of Corral served to increase his unpopularity with the masses. Consequently, in any general estimate of the situation, this attempt on the part of Diaz to designate his successor should be regarded as one of the secondary causes of the revolution.

In the advanced age of General Diaz is to be found another of the secondary causes of his downfall. Although his health was fairly good, the gradual impairment of his faculties increased the influence of the small coterie of friends who, during the last years of his administration, were in reality directing the policy of the country. The fact that most of these men had grown old in the service of the president and were no longer in touch with the real needs of the country served to widen the gulf between the president and the people. The cabinet of President Diaz, with three notable exceptions, was a cabinet of old men, who failed to be helpful to the president in the formulation of national policy, and who were unable to maintain a high standard of efficiency in the administrative departments entrusted to their care. In the War Department, for instance, events incident to the revolution showed not only that the army had dwindled to a point far below the fighting strength prescribed by law but that its equipment, tactical training and personnel had been permitted sadly to deteriorate. Furthermore, the system of recruitment was such as to make the army a kind of penal colony rather than a real national fighting force. Men convicted of crimes and others who incurred the displeasure of the *jefes politicos* were condemned to military service. It is

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no wonder, therefore, that when the supreme test came it was found that a half-hearted devotion to the government characterized a considerable portion of the rank and file. In fact, it has been a matter of surprise to many that, under the circumstances, the army remained loyal during the struggle. That it proved inadequate to meet the situation was due in part to the unfortunate method of recruiting already alluded to, in part also to the fatal defect of the Diaz administration, its extreme centralization. The attempt to direct every detail of the military operations from the president's palace was foredoomed to failure. An aged president with aged advisers who were unacquainted with modern military tactics were totally unfitted to cope with the situation.

The events immediately preceding the downfall of President Diaz clearly demonstrated that advancing age had robbed him of his power of rapid and determined action when facing an emergency. In dealing with the revolutionists he showed a degree of vacillation combined with an inability to form an accurate estimate of the movement of public opinion which stands in marked contrast with the traits which he displayed in the earlier years of his administration. While the weakness of the federal army made the triumph of the revolutionists relatively easy, it is now evident that even with a well-equipped army the Diaz administration would have been unable to maintain itself in the face of the overwhelming wave of public opinion under which it was submerged. The fall might have been less ignominious but it would have been none the less certain. Nevertheless, had the government shown a broader statesmanship in dealing with the revolutionary movement, it is likely that the country would have been spared the severe crisis through which it is now passing. At least, the transition from the old to the new order would have been less sudden, and the menace to the social order correspondingly reduced. Throughout the negotiations with the revolutionists, the government seemed totally incapable of gauging the real force of the movement. Such concessions as were made came too late to satisfy the revolutionary leaders. Had the government quickly responded to the demands of public opinion, the insurrectionists

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would have been compelled to come to terms. A settlement would have been reached without the immediate resignation of President Diaz, thus assuring the maintenance of order and the protection of life and property during the transition period.

The first serious mistake was made by Mr. Limantour on his arrival in New York in March. He had been called by President Diaz to resume his position of close confidential adviser. In New York he was to meet three influential representatives of General Reyes, who had also been re-called from Europe to take charge of the army. On his arrival in New York Limantour opened negotiations with the representative of the revolutionists. This led to the immediate withdrawal of the representatives of General Reyes, and was interpreted by the rebels as an indication of the weakness of the government. This impression was strengthened when President Diaz, in his message to Congress, April 1, after referring to the changes made in his cabinet, declared himself in favor of (1) the principle of non-reëlection of elective officials, (2) the adoption of a new election law, and (3) the reform of the administration of justice. He did not realize that the change of cabinet, which had cost him a tremendous effort, was regarded by the country with complete indifference, nor that his advocacy of reform measures was viewed by the people as an eleventh-hour repentance, of the sincerity of which they were not convinced. The concessions had come too late to be of any real service in pacifying the country. That the revolutionary leaders attached little importance to them is attested by the attitude of the agents of the revolution in Washington.[1] For the first time the situation began to shape itself in such a way as to make the early resignation of Diaz inevitable. This was made clear with the appearance of his manifesto to the nation, May 7, 1911. In this document he endeavored to assure the country of his sincerity in undertaking the reforms. After referring to the impossibility of acceding to the demands made by the insurgents for the immediate resignation of the president and vice-president, he announced his intention to retire from office as soon as peace

[1] Obregon, *op. cit.*

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and order had been established throughout the republic and the danger of anarchy avoided.

The failure of this announcement to bring the opinion of the country to his support served to strengthen the purpose of the revolutionary leaders to secure the immediate resignation of the president and vice-president. Madero was willing to accept a compromise which would not involve the immediate resignation of General Diaz, but his advisers finally induced him to make such resignation the condition *sine qua non* for the consideration of any peace proposition. On Wednesday, May 10, Ciudad Juarez fell into the hands of the insurgents. Although this victory when considered alone was not of great importance, it served to bring to the support of the insurgents the full force of popular opinion and made clear to President Diaz the necessity for immediate resignation.

The resignation of the cabinet took place March 23, and new appointments were immediately made. Among the new appointees was Francisco L. de la Barra, who became secretary of state for foreign affairs. This appointment possessed a special significance because of the announced intention of both the president and vice-president to resign, in which case the secretary of state for foreign affairs succeeds to the presidency, pending the holding of new elections. It was generally understood that de la Barra would be acceptable to the revolutionary leaders during the period between the resignation of General Diaz and the presidential elections.

Ciudad Juarez fell into the hands of the revolutionary forces May 10, and on the 21st the Treaty of Juarez was signed. Between these two dates the popular demand for the immediate resignation of Diaz had become so widespread and insistent that it could no longer be disregarded. After holding out as long as possible against the humiliation of an immediate resignation, the government finally agreed to the following terms: (1) General Diaz to resign before the end of the month of May; (2) Vice-President Corral to resign at the same time; (3) Francisco L. de la Barra to become provisional president and to make the necessary arrangements for the presidential

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elections in conformity with the provisions of the constitution[1]; (4) the new government to study the demands of public opinion in the several states, to bring about such changes in personnel as could be made constitutionally for the satisfaction of such demands, and to provide for the payment of indemnities for damages inflicted during the revolution. It was provided, furthermore, that in view of the acceptance of the foregoing provisions by both parties hostilities should cease, that the revolutionary forces should be disbanded as soon as conditions in the several states would permit, and that the repair of railway and telegraph lines should be undertaken without delay.

On the 25th of May the resignations of President Diaz and Vice-President Corral were accepted by the Chamber of Deputies, and on the same day Francisco de la Barra was sworn in as provisional president of Mexico.

The main problem confronting the provisional government was the disbanding of the revolutionary forces. Until this was accomplished the pacification of the country could not be effected. Pending fulfilment of the numerous promises made by Madero, some of the minor leaders refused to disband their forces. Many of these promises could not be fulfilled at once, some not at all; and it required the most consummate tact on the part of the government to avoid open conflicts. The difficulties with the revolutionary general Zapata in the state of Morelos illustrate the dangers of the situation. Although his forces were paid off and supposedly disbanded on two different occasions, they reassembled as soon as anything occurred to displease their leader. His last demand was for a change in the governorship of Morelos, and its fulfilment was made a condition prerequisite to the disbanding of his forces. The government immediately sent a large detachment of federal forces to bring him to terms.

Article IV of the agreement of Ciudad Juarez provided that the new government should consult popular opinion in the several states with a view to meeting its demands. This was interpreted by the revolutionary leaders to involve the necessity

[1] *Cf.* Articles 72, 81 and 82 of the Mexican Constitution.

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of radical changes in state administration. It was pointed out to President de la Barra that the revolution was due in great part to abuses of the state governors and their immediate subordinates, the *jefes politicos*. It was contended, therefore, that no real progress toward the establishment of democratic principles could be made until the state governors were removed and provisional governors selected, whose main duty it would be to issue a call for the election of governors and to make the preparations necessary for fair elections that should truly register the popular will. The main difficulty which presented itself was to bring this about without violating the provisions of the federal constitution. The resignation of the state governors of the Diaz régime was secured without difficulty. A mere intimation from the central government that such resignations would be welcome sufficed to bring about the immediate vacating of all these offices. In those cases in which the state legislatures had been dispersed by the revolutionary forces, as in the states of Guerrero, Colima and Morelos, the procedure was comparatively simple. Under a provision of Article 72 of the federal constitution, the upper house of the federal Congress may, when the executive and legislative authorities of a state have disappeared, authorize the appointment by the president of a provisional governor, who shall serve until new elections are held. On May 31 the Senate declared that this condition existed in the states of Guerrero, Colima and Morelos; and on June 1 President de la Barra appointed provisional governors. This procedure was subsequently followed in a number of other states. In those states in which the legislative authority had not disappeared, the duty of selecting the provisional governors devolved on the state legislatures. In all these cases the wishes of the leaders of the revolution as to the persons to be selected for these offices were followed.

With the election of new governors and new state legislatures a new menace appeared—the prospect of radical and subversive legislation. Throughout the country there was an insistent demand for the abolition of the office of *jefe politico*, and a demand, no less insistent, that all local offices be made elective. In some of the states this step has already been taken, and has

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given rise to many misgivings on the part of the more thoughtful element of the population. It is true that in many cases the *jefes politicos* shamefully abused their power, and that the feeling of popular opposition was thoroughly justified. These abuses, however, were due to the unfortunate character of the appointees rather than to the nature of the office. With a people untrained to local self-government, a considerable degree of administrative centralization is essential. Left to their own devices, the rural and urban communities are likely to commit many errors which will involve irreparable injury to the country. If, therefore, the powers heretofore exercised by the *jefes politicos* are transferred to elective municipal officials, an elaborate system of central administrative control over such officials will be necessary. Many years will elapse before the extreme type of municipal autonomy which the revolutionary leaders are now advocating will be workable in Mexico.

To those who are familiar with the antecedents and have watched the progress of the revolution against the Diaz administration, it was evident that with the election of Madero to the presidency the country would be compelled to face the most serious crisis in its history. The extravagant promises made by the revolutionary leaders had aroused hopes which were manifestly incapable of fulfilment. Furthermore, the political unrest and social upheaval incident to a movement of this kind had brought to the surface, and in some instances to positions of local leadership, elements of Mexican society whose main purpose was the looting of their fellow-citizens. It was evident that the full force and power of the new government would have to be turned against these elements, if the country was not to fall back into that condition of anarchy from which President Diaz had rescued it. Immediately after the election and long before the inauguration of President Madero the rumblings of discontent were heard. The disappointed ambitions of some of Madero's former associates, the dissatisfaction of others with the policy of the new government, and the desire of a still larger element to profit by the unsettled conditions through brigandage and robbery led to a series of uprisings which the government has thus far been unable to suppress. These make the future

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of the Madero administration exceedingly uncertain, and at any moment may cause its downfall.

The overthrow of the present government would be a national calamity, since it would inevitably bring the country to the verge of social disruption. It must always be borne in mind that during the greater part of the nineteenth century Mexico was in a political condition bordering on anarchy, and that there is real danger of a return to such conditions. It will require a firm hand to curb the fierce political passions that have been aroused and to hold in check the elements that have profited by the political unrest of the last twelve months.

While the possibility of intervention on the part of the United States has exerted a certain sobering influence, it has not been sufficient to prevent insurrectionary movements. With a jacobinism as fierce and radical as that of the French Revolution guiding the political thought and action of the revolutionary leaders, with an electorate of which at least eighty per cent is illiterate, the political outlook for the next few years may well arouse the misgivings of every patriotic Mexican.

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A DOCUMENTARY HISTORY OF AMERICAN LABOR[1]

THERE are two aims which may guide editors in the reprinting of documents. In the first place, they may desire to make rare sources accessible to students. Secondly, they may select documents not so much because they are difficult of access but because they illustrate what are conceived to be the chief points in a historical process. Both of these aims appear to have influenced the editors of these volumes. In his very interesting preface, Professor Ely tells us that, after a mass of material had been collected by himself and his collaborators as material for a history of labor in the new world, it was decided to print the most important documents "for the benefit of scholars to whom the collection itself was not accessible." On the other hand, the title of the work indicates that illustrative value was an important consideration in the selection of the documents to be printed.

Obviously the two aims are not necessarily opposed. A set of documents may be rare and at the same time may fit into a plan for a comprehensive history. Unfortunately, however, only in exceptional cases do the two plans agree in results. In a history the entire field must be covered, and in most instances the editors can not publish all the documents that bear upon any single topic. On the other hand, if a student is to use reprinted documents as sources, it is essential that all the important documents relating to a particular subject shall be printed. In the present work, as will be shown more fully later, some parts and even some whole volumes are highly valuable source material, while in other parts the documents serve merely as *pièces justificatives* to the introductions. From the standpoint of the student it is unfortunate that the editors did not devote their space to printing rare sets of

[1] A Documentary History of American Industrial Society. Edited by John R. Commons, Ulrich B. Phillips, Eugene A. Gilmore, Helen L. Sumner and John B. Andrews. Prepared under the auspices of the American Bureau of Industrial Research with the coöperation of the Carnegie Institution of Washington. With preface by Richard T. Ely and introduction by John B. Clark. Cleveland, Ohio, The Arthur H. Clark Company, 1910–1911. Volumes iii, iv, v, vi, vii, viii, ix and x: 342, 385, 392, 353, 364, 346, 379, 370 pp.

Volumes iii–x of this collection may be regarded as forming a distinct whole, since together they cover the history of the American labor movement from 1806 to 1880. Volumes i and ii, which deal with Plantation and Frontier, 1649–1843, have already been reviewed in this QUARTERLY, vol. xxv, p. 525.

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documents in their entirety, but in order to do this they would have had to abandon the design of making these volumes a history of the American labor movement.

Volumes iii and iv, "Labor Conspiracy Cases, 1806–1842," edited by Professor John R. Commons and Professor Eugene A. Gilmore, are constructed almost solely with an eye to the student who desires source material. They contain reprints of or statements concerning all the labor conspiracy cases from 1806 to 1842 that have been found, except a few cases which are accessible in the ordinary law reports. The reprints are practically complete, although here and there in the longer reports passages which the editors judged to be repetitions or unimportant have been omitted. Seventeen cases are included, of which the Sixteenth Report of the Department of Labor noted eleven. The six new cases are the Baltimore Cordwainers, 1809, the Buffalo Tailors, 1824, the Philadelphia Spinners, 1829, the Baltimore Weavers, 1829, the Hudson Shoemakers, 1836, and the Philadelphia Plasterers, 1836. The accounts of all the new cases with one exception are from newspapers or from the brief notes in the court record. The copy of the trial of the Hudson Shoemakers in 1836 which the editors have unearthed is probably unique. It is interesting to note that of the seventeen cases eleven fall in the years 1806–1810 and 1829–1836. The comparative frequency of the prosecutions in both periods is symptomatic of the rising tide of trade-unionism.

The services of the editors in bringing to light new cases is overshadowed by their services in printing the reports of the cases already known. The reports of nearly all these cases are very rare; indeed, in one case, that of the Thompsonville Carpet Weavers, the existence of any report has been unknown even to diligent students.[1] Several of the reports are very detailed and include the testimony of witnesses as well as the arguments of counsel and the opinions of the judges. The testimony throws light both on the methods of the unions and the forms of business organization. In both respects the reports are among the most important sources in American economic history. Professor Commons, indeed, in his introduction[2] to volumes iii and iv, offers an ingenious outline of economic evolution, with an elaborate subdivision into stages, based primarily on the data contained in the Cordwainers' cases. It is to be regretted that the editors have not

[1] See Sixteenth Report of the Commissioner of Labor, p. 875.

[2] Previously published as an article in the *Quarterly Journal of Economics* November, 1909.

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added also a companion introduction on the development of the doctrine of conspiracy in labor cases in the United States. The law of labor organizations is much in need of the historical treatment for which these cases furnish important material.

It is to be noted, however, that although the two volumes contain highly valuable material, they do not exhaust nor even give an adequate idea of the labor movement of the period prior to 1826. In the introduction to a later volume in the series the editors contend that the year 1827 marks the beginning of the American labor movement, "since previous to that time organization had been limited to separate trades, and there had been no union of trades and no union of workingmen as a class for a common object." This, however, is to limit very narrowly the term labor movement. We know that numerous trade unions existed in New York, Philadelphia and Baltimore prior to 1820, but no attempt has yet been made to bring together the facts concerning the movement and to place it in its proper relations with the political movements of the period. Two at least of the conspiracy cases—that of the Philadelphia Cordwainers, 1806, and the Baltimore Cordwainers, 1809—provoked an acrimonious political discussion between the Federalist and Republican newspapers. In a documentary history some of this material should find a place. But the editors of these two volumes had here in mind to print a complete set of documents relating to a particular subject, and not to illustrate by documents the labor history of a period. Students will be grateful for this decision, although the general reader will lament a great gap in his history.

In volumes v and vi, "Labor Movement, 1820–1840," edited by Professor Commons and Dr. Helen L. Sumner, the editors have achieved more successfully than elsewhere the double aim of making source material available for students and of writing a history of the labor movement of the period. The number of documents relating to the movement was not so large as to make it impossible to include all significant items; and while there are naturally many gaps in material of this kind, the editors by wide and diligent search have been able to piece together a comprehensive historical account. This happy result is largely due to the fact that the labor movement from 1820 to 1840 was as yet confined to a single line of development. The introductions in these volumes are eminently satisfactory and form a history of the labor movement of the period that leaves little to be desired. While other matters are covered, such as "Economic and Political Conditions" and the "Beginnings of National Trade Unions," the main interest of these two volumes centers in the remarkable labor movement which

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began in 1827 with the organization in Philadelphia of the Mechanics Union of Trade Associations and closed in 1837 with the dissolution of the National Trades' Union. All the historians of the American labor movement have, of course, given some account of this period; but the documents here printed add greatly to our knowledge, and it may be said that for the first time we are able to understand the significance of many of the events.

In the first place, the new material here brought together makes it possible to understand the aims of the movement. Our information on this point has hitherto been confined to bare lists of the demands formulated by the assemblies of workingmen. There are here presented editorials from labor newspapers and complete accounts of conventions of workingmen. It is possible by the aid of these to judge the relative importance attached to the different planks in the labor platforms. Professor F. T. Carlton,[1] for example, has already shown, on the basis of the documents here printed, that the labor movement of the period was far more influential in securing the establishment of the public school system than has heretofore been supposed. These volumes make clear also the complicated political workingmen's movements in New York from 1829 to 1831, which have hitherto been a labyrinthine puzzle. The relations of the Agrarian Party, the State Guardianship Party and the North American Hotel Party to each other and to the larger political parties become intelligible in the light of the documents here printed.

Even more important to the student of trade-unionism than the political demands and activities of the workingmen's parties is the revelation given by these documents of the character of the organization behind the movement. The whole period is remarkable for the predominance of the central labor union or, as it was then called, the trades union. The editors with apparent justification claim that the trades union developed at least as early in the United States as in England. In any event, it would be difficult to find in any country a period in which the trade-union movement was organized around the central labor union as fully as in the United States from 1833 to 1837. Trades unions were organized not only in New York and Philadelphia but also in eleven other cities. The character and activities of the trades unions at New York, Philadelphia, Boston, Baltimore, Washington, Albany and Newark are shown by numerous documents, chiefly from the *National Trades'*

[1] "The Workingmen's Party of New York City, 1829–1831." POLITICAL SCIENCE QUARTERLY, vol. xxii, pp. 401–415.

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Union. This important movement culminated in the organization in July, 1834, of the National Trades' Union, composed of delegates from local trades unions.

The documents printed in these two volumes are drawn chiefly from *The Man*, the *National Laborer*, the *National Trades' Union*, the *Mechanics' Free Press* and other labor newspapers of the period. These newspapers are very rare, in some cases only a single incomplete set having been preserved. The editors have diligently searched the libraries of the country and even private collections, and it is unlikely that any important material has escaped them.

Volumes vii and viii, edited by Professor Commons, cover the labor movement from 1840 to 1860. The documents are divided into five groups, as they relate to "Economic and Social Conditions", "Owenism and Association", "Land Reform", "Hours of Labor," and "Labor Organizations." In all of these groups the general reader will find many interesting illustrative documents, but the student will find them of very unequal merit as collections of source material. The documents in the section devoted to "Economic and Social Conditions" from the nature of the case are merely illustrative. Similarly, the small group of documents relating to "Owenism and Association" add little to our knowledge of the Fourierite movement. The field had already been covered by previous writers.

The documents printed in the three other groups will be of value to students. Those given under the head of "Land Reform" show clearly the great influence which Evans's *Working Man's Advocate* and its successor *Young America* exerted on land legislation. The enactment of the homestead exemption laws in a number of states can be traced directly to this source, and the adoption of the policy of allotting the public domain to actual settlers was largely due to the same influence. Professor Commons in the general introduction to the two volumes claims also that the propaganda of Evans was intimately connected with the origin of the Republican party. The documents enable the student to study Evans's doctrine more fully than has hitherto been possible and to trace the steps in his propaganda.

The group of documents on "Hours of Labor" deals with the beginnings of the agitation for the reduction of the hours of labor by state legislation. The greater part of the documents relate to the movement in Massachusetts. Adequate accounts of the various meetings of the revivified New England Working Men's Association in 1844, 1845, 1846, drawn from the files of the *Voice of Industry*, the *True Workingman* and the *Awl*, form the most important part of this group. Lengthy

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extracts from the Massachusetts state documents, containing the reports of the earliest legislative committees on hours of labor, seem hardly rare enough to deserve reprinting.

The section on "Labor Organizations" is disappointingly scanty. The only topic dealt with under this head with any completeness is the coöperative and benevolent trade union, which was the typical form of labor organization from 1845 to 1851. The period from 1853 to 1860, one of the most important in the history of American trade-unionism, is covered with three brief documents. Some eight or ten important national trade unions were organized in this period, but the documents throw no light on the subject.

The introductory matter in these two volumes is far inferior to that in volumes v and vi in giving the reader a clear picture of the labor movement of the period. In place of the simple, straightforward accounts there given, we have here an ingenious attempt to bring kaleidoscopic social movements into unity by centering them around the intellectual development of Horace Greeley.[1] Interesting as this essay is, it is not suited to serve as an introduction to a series of documents.

Volumes ix and x, edited by Professor Commons and Dr. John B. Andrews, cover the American labor movement from 1860 to 1880. The documents are divided into six groups: "Labor Conditions", "National Labor Union", "Ira Steward and the Hours of Labor", "International Attempts", "Knights of Labor" and "Farmers' Organizations." The section devoted to "Labor Conditions," like similar sections in previous volumes, offers little that is new to the student. It is a question whether the needs of even the general reader would not have been better supplied if a third of the space had been given to a description of economic conditions by the editors. The documents relating to the "Knights of Labor" seem hardly worth inclusion, even as merely illustrative: they consist of extracts from the ritual and a cut of the great seal of the order. The documents relating to "Farmers' Organizations" are chiefly from Periam's *The Groundswell*, Kelley's *Patrons of Husbandry* and the Proceedings of the National Grange of the Patrons of Husbandry. The extracts are brief and include so small a part of the sources that they will prove of little service to serious students. The section relating to "Ira Steward and the Hours of Labor" is composed chiefly of extracts from the writings and speeches of Steward. These extracts are from sources which are

[1] This introduction was printed in this QUARTERLY, vol. xxiv, pp. 468–488, under the title "Horace Greeley and the Working Class Origins of the Republican Party."

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inaccessible to most students, one, indeed, not having been printed before. They give a sufficiently clear conception of Steward's economics. Not many readers, however, will share the high estimate placed by the editors on Steward's views and influence.

The sections in these two volumes which will be most valuable to students are those on "International Attempts" and the "National Labor Union." The former contains interesting extracts, hitherto unpublished, from the copybook of F. A. Sorge, the leader of the American branch of the International. These extracts show the view of the American labor movement of the period taken by an intelligent and observant official of the International. The section on the "National Labor Union" consists of accounts of the proceedings of that interesting organization. The proceedings of only one session appear to have been printed as a pamphlet, but the editors have brought together accounts of the other sessions from the labor papers of the period. Unfortunately, great compression appears to have been exercized and the omissions noted are numerous. The student will regret that the editors did not sacrifice the greater part of the illustrative material in these two volumes and give space for a definite and complete edition of the proceedings. In such an edition the newspaper accounts should, of course, be carefully collated.

The introductory matter in volumes ix and x gives a fairly clear outline of the labor movement of the period, and contains besides an interesting argument to the effect that in this period the American and European labor movements moved along similar lines. Volume x contains an exhaustive index to the whole work, and also a finding list of the sources quoted.

The series is much the most important contribution that has been made to the history of the American labor movement. It justifies by its results the indefatigable labors of its editors. At almost every point it throws light on hitherto obscure events.

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FITE'S INDIVIDUALISM[1]

THIS is a book to delight the heart of the rationalist. Starting with an abstract definition of consciousness, Professor Fite passes through a severely logical analysis—always impressive, even though not always convincing—to a demonstration of the benefit theory of taxation and to the conclusion that railroad rates should correspond to the weight of objects transported and the distance they have to go. It is a book full of sharp logical distinctions, which, despite an occasional caution on the part of the author that evolutionary ideas have softened absolute distinctions, are usually carried rather beyond "the bitter end." The theme of the book is the significance of reason for the individual life, for the social order and for morality.

The central distinction which runs through the book is that between the conscious and the mechanical. We have the mechanical individual, an object in space, acting in accordance with impersonal law, and the conscious individual, as he appears to himself, acting for personal *reasons*. We have the mechanical and the conscious societies, and the mechanical and the idealistic views of nature. The line of division is not always clear, nor is it, apparently, always the same. The preliminary statement is simple enough. The mechanical individual is an object in space, like a billiard ball. As such he limits other individuals, since two mechanical objects cannot occupy the same space. For consciousness, however, things can be both here and there, both now and then, both many and one. If this statement of the distinction were to be adhered to throughout, there would be, in the first place, no trouble in passing from mechanism to consciousness through that organic world which lies between them, and, in the second place, no object in making the distinction in a book on social and political philosophy. But apparently Professor Fite splits up the intermediate organic field between mechanism and consciousness, and the reviewer is at a loss to know just where it is meant to draw the line. An individual moved by habit or instinct or feeling is, apparently, a mechanical individual. The individual who illustrates economic and statistical laws, doing the expected thing, is a mechanical individual. And a society where the

[1] Individualism. Four lectures on the Significance of Consciousness for Social Relations. By Warner Fite. New York, Longmans, Green and Company 1911.—xix, 301 pp.

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nexus is "consciousness of kind" or habit or instinct or pure feeling or "brotherly love," or anything except self-conscious appreciation of the reasons for social relationships, is a mechanical society. For the mechanical individual and the mechanical society, limitation, conflict, unsatisfied desires, peace as an equilibrium of forces and harmony through self-sacrifice and mutual concession are inevitable. Quantities are fixed. What one has another cannot have. The natural environment is subject to the strict operation of the law of diminishing returns. But consciousness is free and expansive. For the conscious individual, nature is indefinitely elastic; the law is a law of increasing, not diminishing, returns; reason unlocks all nature's secrets and satisfies all desires. And the conscious society—where every man knows what he himself desires, and what other men desire, and where they coöperate in the light of reason upon an ever-elastic nature—needs no equilibrium, no surrender, no mutual concession, no self-sacrifice. All desires are realized, all hearts satisfied; even the lover whose mistress is won by another, if only consciousness be clear enough, finds an adjustment which gives him all he could wish for. (The method is not specified.)

But the nerve of this distinction is cut, and its significance as the basis of a social philosophy vastly lessened, when we reflect that consciousness is itself limited, and limited by those very factors which our author counts as mechanical. For consciousness is surely correlated with brain. And brain energy is limited. As we use consciousness for one purpose, we have less to devote to another. The law of diminishing returns holds of conscious activities as of agricultural land, even though the operation be not so manifest or immediate. By abolishing, in thought, the limitations upon the quantity of land we can abolish the law of diminishing returns there, just as Professor Fite abolishes it for consciousness when he thinks of consciousness as disembodied, or speculates about the workings of the mind of God (pages 38, 46, 97).

> For now, if you would define the ultimate possibilities of progress, you must at the same time define the ultimate limits of our nature and possibilities as conscious agents. . . . For that matter you can hardly take up the task without discovering that, as Professor Royce has shown, consciousness by its very nature is unlimited and infinite. For assume that you have finally stated the limits of your conscious self. Any such statement involves a view of something beyond; and therefore in that very statement you will be occupying, and speaking from, a larger point of view than that of the self you set out to define. This expansion of your point of view is a further expansion of yourself; and this, like every pre-

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vious expansion, will mean that your capacity for dealing with the world before you is one more point enlarged [page 49].

Surely a royal road to knowledge, could the finite, reeling brain pursue it!

The conscious individual becomes, for Professor Fite, the source and center of all values. His reason, not his emotions and instincts, becomes the basis of all values. And consciousness, on the moral side, has the supreme value: the value of life consists in its being conscious; life is valuable in the degree to which it is consciously lived, in the degree, that is, to which it brings many things together, the here and the there, the now and then, keeping its elements distinct from each other, and yet binding the many into a logical unity.

Obligation, to Professor Fite, is a matter of logic (pages 174, 175). The social nexus is a logical nexus, a linkage of men by the force of reason. It is not clear that our author would entirely discount the fact that society is actually largely bound together by ties of feeling, habit and inherited instinct, though he does contend that "an intelligent appreciation of personal advantage is, I should say, at least as permanent and reliable a motive as a habit, an assumption, or even a feeling of brotherly love" (page 178). But ideally, for Professor Fite, a social harmony based on the fact that each individual is fully conscious of his own ends and purposes and of those of his fellows, and that he coöperates with them in technical adjustments for the realization of all these purposes, is far nobler than a social nexus of the "mechanical" (*i. e.* instinctive, habitual, emotional, functional) type. That, given this degree of consciousness, perfect coöperation, harmony and adjustment would inevitably follow, seems to our author too certain for serious question.

The psychology of this view of reason needs clarification. Reason seems at times to be a dry, clear light, free from emotion of any sort. At other times, however, reason seems to include the emotion of self-interest, and much of the argument would not hold if that element were excluded. That is reasonable which makes for the advantage of the reasoning individual. It is wholly impossible for Professor Fite that a conscious, reasoning individual should find any motive in the good of others unless it is also his good, should value objective ends which have no personal reference. This conception of reason is to be sharply distinguished from the notion of reason which one meets in the voluntaristic psychology of, say, Schopenhauer and Paulsen, or in the present-day functional psychology and pragmatic philosophy. In these theories

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the reason is conceived as the servant of the will, will being taken in the wider sense as including all motor and affective elements in mind. The source of values is, not the reason, but the volitional-emotional side of mind. And the reason is concerned, not with supplying the major premises of action, but the minor premises of ways and means. If, as a matter of fact, an individual is by instinct, habit and emotion so constituted that he values the good of his friend or the safety of his country or the glory of God more than he values his own good or his own life or his soul's salvation, then there is nothing in the nature of reason to condemn his sacrificing his own personal good to the ends which he values more highly. The ultimate authority rests with the will. To show that Professor Fite's conception of reason and his theory of value are in conflict with the doctrines just set forth, is not, of course, necessarily to condemn Professor Fite's position. He may still be right. But the weight of current opinion, especially in the field of the psychology of value, is against him, and it is to be counted a serious defect in his book that he has not been more at pains to consider the voluntaristic and functional points of view. In so far as he considers the functional psychology at all, it is to criticize it from what he would consider a moral, and what appears to the reviewer an æsthetic, view-point (pages 93, 94).

In illustration of Professor Fite's general method, it may be worth while to consider further his doctrine that all values have a personal reference, and to indicate the positive argument with which this doctrine is supported. It rests ultimately on the general proposition that all knowledge involves a personal reference, and that value grows out of knowledge.

> I say, then, that awareness of anything involves so far, however vaguely, a corresponding awareness of self. For the merest awareness, to be aware of anything whatever, must be aware of this and that, and of this as different from that. Now any awareness of difference implies a comparison from a certain point of view, which for the present represents yourself [page 71]. . . . Value appears in the world when a being which is acting in a certain way and moving in a certain direction becomes aware of the nature and direction of his movements and thereby capable of asking whether this is the direction in which he wishes to move. Value arises, then, with the discovery and location of yourself as a moving power in the world. . . . This consciousness of your own power is all that creates for you an end, or makes any object an object of value [page 89]. . . . Resolve, if you like, all your actions into those of your body, . . . and call the subject simply "that object." I say that the distinction of subject and object is as conspicuous as ever and as clearly as ever present in any stage of con-

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sciousness. For "that object" possesses a unique character which marks it off, even as an object, from all other objects in your world. It is the object, and the only object, which furnishes a point of view from which all other objects are surveyed and their values estimated [page 161].

The method here employed is that of making *explicit* by logical analysis the *logical implications* of any idea in consciousness. We need not quarrel as to the accuracy with which the method is applied,[1] although the reviewer confesses to some hesitancy in accepting, even from this aspect, the second of the passages just cited. But it is obvious that, psychologically considered, the method is in high degree fallacious. For surely not every implication of our conscious ideas does come into consciousness! We have something else to do! And even when we do seek the implications of our ideas, we do not always deduce them accurately. Moreover, a logical mind is in large part the product of social education. And hence surely that is a false psychology which would carry this method into the study of child psychology, or of the psychology of primitive man, as Professor Fite does in his effort to disprove the James theory of instinct (pages 158 *et seq.*) and the doctrine of the priority of the social over the ego in the mind of the child and of primitive man (pages 150–169).

Both for the individual and for society, the ideal of our author is to make all activities and all relations conscious. The functional psychology, with its "unity of the department store or the stock corporation," cannot pretend to offer the ideal of a conscious individual from the standpoint of the conscious agent himself. For him the ideal is not to relegate any part of his living to the care of nervous automatisms, but to make every feature of his life the object of immediate conscious control and of immediate conscious satisfaction. So with society. Those automatic and relatively unconscious activities and relations, like the supplying of an opaque demand by the producer who knows and cares little about the wants that evoke his activity, are "mechanical," and so, in Professor Fite's view, vastly less worth while than if they were fully self-conscious. For example:

[1] That at times this mode of reasoning does carry the author into real logical difficulties is shown in the following passage: "All this follows, as you will see, directly from the conception of the conscious individual. A relation of ideas is itself an idea—never a mere relation, but an idea of relation" (p. 100). Does not this involve that *infinite regressus* with which Bradley and Royce have made us familiar? For how, on the basis of this logic, could an idea of relation be related to the other ideas to be related except by still other ideas of relation, calling for still other ideas, *etc.*?

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I would not be understood to deny that the economic process is a conscious process. All that I say is, first, that it is an imperfectly conscious process—which, after all, may be obvious enough—but, secondly, that *to this unconscious side of the process is to be attributed that feature of the situation by virtue of which your gain is necessarily my loss*[1] [page 119].

The reviewer does not question the doctrine that, for a being whose consciousness lacks the "mechanical limitation" of correlation with a finite brain, it might be a source of occasional satisfaction to give personal direction to the digestive process and to supervise the beating of the heart. Such a consciousness would doubtless speedily exhaust all the more significant and interesting problems. And a society which can give unlimited attention to all the pressing problems of social reform might well interest itself in watching each shovelful of coal in its agitated career from the mine, through the furnace, to its last resting place on some remote ash-heap.

Into the moral problem Professor Fite carries his logic. Self-sacrifice, mutual concession—these are features of a mechanical situation and have no place in his morality. Enlightened selfishness on the part of men conscious of their own ends and of the ends of others—this is his moral ideal. For a morality based on social instinct or sympathetic emotion or "brotherly love" he has no use. It is not a naïve selfishness. All things naïve are at a discount. It is a deliberate selfishness, and the degree of the moral worth of a man depends on the degree of his deliberateness and intelligence. How clear is his reason? Knowing this, you know how good a man he is. The doctrine is consistent even in its pretty obvious bankruptcy. The only ground the author can find for condemning rebating is the low degree of intelligence it requires, and the piratical trust magnate is morally inferior to the inventor only because he manifests less intelligence! (pages 265–268).

Love is also, ideally, an essentially intellectual thing. "Love is the conscious mutual adjustment of self-conscious agents" (page 204). "I take issue with the . . . Christian teaching that the feeling [of love] is its own justification. . . . According to my view, every feeling must seek its justification in facts" (pages 192, 193, 216). It does not seem to the reviewer a caricature of our author's position to say that the truest lover would be a professor of philosophy, and that the most perfect love is that which exists between two professors of philosophy;

[1] The italics are the reviewer's. *Cf.* the reference to the stock-market on page 17. The economist will, of course, take issue with the italicized passage. Professor Fite writes in calm disregard of common-place doctrines of contemporary economics.

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for the ideal of intelligence which underlies the whole system, including the ideal of love, is, as our author tells us in round terms, "academic" (page 270).

We have in the book a revival of the social-contract theory and of the doctrine of natural rights, not as a matter of historical fact, but as a matter of logical implication of social relations. A number of practical problems are passed in review from the standpoint of the abstract principles set forth. Socialism is condemned on the basis of ultimate philosophic notions, and the problem of railroad rates is similarly discussed (pages 285 *et seq*). The economist is not likely to attach great weight to the contribution made to the railroad problem, and Professor Fite does well to state that he speaks as a layman. Nor will his resurrection of the benefit theory of taxation (pages 177, 259) be likely to change current views on the subject.

Professor Fite's system of social philosophy will not, the reviewer believes, command very general assent. And yet his book is impressive, stimulating and refreshing. It is refreshing to find a bold, clear thinker who will follow his logic where it leads. And it is refreshing to find an individualist who will challenge the prevailing "social" tendency in moral and social philosophy, analyze its concepts, criticize sharply its aberrations and disturb that tranquil current of its prosperous course which so easily becomes muddy and sluggish. It is a book which no political philosopher and no sociologist should ignore.

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REVIEWS

The Practical Results of Workingmen's Insurance in Germany. By FERDINAND FRIEDENSBURG. Translated from the German by LOUIS H. GRAY. New York, The Workmen's Compensation Service and Information Bureau, 1911.—62 pp.

Habent sua fata libelli. Truly remarkable is the fate of this little pamphlet, which, exclusive of various prefaces and introductions, consists of only 48 pages. A criticism of numerous details of organization and administration of a German institution as yet little known in the United States except for its general purpose, formulated by an ex-president of the Senate in the Imperial Insurance office, it has created almost a sensation in this country, serving as a weapon for many who oppose the movement for social legislation and intimidating some of those who would further it. When the whole civilized world is following in the footsteps of Germany in developing social insurance—witness the French Pension Act of 1910, the English Insurance Act of 1911—it takes a good deal of courage to find so many faults in the prototype of all this modern legislation as Dr. Friedensburg has discovered and reveals.

Notwithstanding the author's repeated assertions of sympathy with the general purpose of social insurance, there is very little left of the structure after he has completed his criticism. The reviewer tried to make a list of the specific charges made by the author, but was amazed to find that there were no less than fifty such charges, covering all aspects of national insurance in Germany—social, economic, political, financial, ethical, administrative, judicial, medical, industrial and commercial. A few of the most important specifications are all that it is possible here to notice. According to the author: (1) workingmen's insurance has imposed upon German industry an enormous financial burden, interfering with Germany's position in the international market; (2) the methods of administration are cumbrous and the cost is excessive; (3) "social sympathy, humanitarianism or whatever other feelings these unhallowed catchwords cover" have been substituted for legal justice, both in courts and administrative bodies, thus demoralizing the German nation; (4) an enormous amount of malingering, exaggeration, wilful aggravation and even self-infliction of injuries has developed; (5) the workmen have been taught the love of litigation; (6) they have

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been pampered by excessive generosity in grants of pensions and by excessive luxury in hospitals, in food, drink, medical care and nursing; (7) the original aim of social insurance, reconciliation of classes, has failed, and the general unrest has only been aggravated; (8) the Social Democrats have a very bad influence, especially in the management of the sick-benefit funds, often conducting anti-governmental agitation in the committees; (9) the tendency of many employers to pay the workmen's share of old-age pension dues is declared to be a vicious one; and (10) alarm is expressed concerning future extensions of the system.

It is obviously impossible in a brief review to analyze all these charges, let alone meeting them. The reviewer strongly suspects, however, that the devil is not as black as the ex-president has painted him. Dr. Friedensburg has doubtless enjoyed an exceptional opportunity to learn the inner workings of social insurance in Germany, but it may be questioned whether he has made the best use of his opportunity. His repeated attacks on the Social Democrats and on the workingmen in general; his tender solicitude for the fate of the employers' associations, "the only institution that stood the test"; his sweeping statements regarding injury to German industry—all indicate lack of impartial judgment. Admit that social insurance costs Germany some 2,000,000 marks a day, or 730,000,000 marks ($180,000,000) a year. The American workmen spend annually over $70,000,000 for industrial insurance, which practically amounts to funeral insurance only, and this country has not been ruined yet.

As to the administrative difficulties, a certain amount of malingering is not a peculiar characteristic of the German system; the same complaints have been made in France, Italy and England. The prevention of malingering presents a distinct administrative problem, which is entirely independent of a general appreciation of the system. It is, however, a symptom of mental color-blindness to fail to perceive the normal because of familiarity with the abnormal. Nervous physicians and sensitive district attorneys sometimes get into that state of mind. If Dr. Friedensburg had even a partial knowledge of the deceit and perjury of injured plaintiffs, employers, witnesses and experts which liability litigation in this country develops, he would perhaps view the efforts of the German workmen to increase their small pittances of pensions in a slightly more charitable spirit. And it takes a good deal of credulity to accept his statement that wilful self-infliction of injuries, with subsequent opening of wounds *etc.* is a common occurrence in Germany. What is the object to be gained? A pension equal to two-thirds of the diminution of earning capacity! The German workman, though he may

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be a stolid sort of fellow, is presumably not altogether insensible to physical pain. Even in this country, with the possibility of $5000 or $10,000 verdicts, self-inflicted injuries are very rare indeed.

In support of his charges the author offers practically no evidence, except a few anecdotes; and these are of so extreme a type that they are about as helpful for an intelligent judgment as is the famous coal-in-the-bathtub story for the solution of the housing problem.

The pamphlet has been given wide publicity by some militant representatives of American liability insurance companies. Although antagonism to workmen's compensation is denied in the preface, it has expressed itself in the selection of this pamphlet for translation and distribution. To the reviewer the attitude of these persons seems unwise. Compensation has come to stay in this country, and a fight against it will only discredit the insurance companies. Besides there is no necessity for such antagonism. From an insurance point of view a compensation system can be better handled than the existing liability system. Compensation permits a careful actuarial computation of cost, while liability insurance is largely a gambling proposition. And the casualty people know that the recent rapid increase in the losses on employers' liability business, felt by all insurance companies, was the result of liability verdicts and not of compensation awards.

I. M. RUBINOW.

SCHOOL OF PHILANTHROPY, NEW YORK CITY.

The Steel Workers. By JOHN A. FITCH. New York, Charities Publication Committee, 1910.—xiii, 380 pp.

Homestead: The Households of a Mill Town. By MARGARET F. BYINGTON. New York, Charities Publication Committee, 1910. —xv, 292 pp.

These books belong to the series of six volumes containing the "findings" of the Pittsburgh Survey. The undertaking has aroused general interest and the facts brought out have already received wide attention; but the thoroughness of the investigation and the wealth of material presented give to the published form of the final reports a degree of permanency not usual among such works.

In *The Steel Workers* the author has presented a body of facts of unusual importance. The volume opens with a description of the men as steel and iron workers, describing in untechnical language the processes of work and the methods and conditions of labor, keeping

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constantly in mind the human point of view. In the second part is given a brief sketch of the struggle of the men for control of the conditions of labor. This account takes the reader through the beginnings of unionism among the iron and steel workers, the development of the Amalgamated Association and finally the disastrous strikes, in which the workers lost all that organization and coöperation among them had secured. This account is presented in a manner that reveals the personal, human side of the struggle, with all that it meant to the workmen, their families, their standards of living and their ideals. The third part presents an analysis of the situation as it exists with unionism eliminated. Its general character is designated by its caption: "The Employers in the Saddle." Its chapters deal with wages, cost of living, the working day and week, speeding up, the bonus system and, finally, the labor policy of unrestricted capital. The fourth part, "The Steel Workers and Democracy," discusses more general topics.

The volume entitled *Homestead* deals with a single town in the Pittsburgh district, chosen as one where a detailed study could be made most satisfactorily. The volume opens with a description of the town itself, geographical and political. The second and third parts contain the most important material. Taking up, in part ii, the English-speaking households and, in part iii, the Slav as a homesteader, the details of the study are presented. Incomes are dealt with only as they constitute the basis of expenditure. Expenditures are analyzed on a basis of the budgets secured in the study. Rent, the table, the dinner pail, the budget as a whole, the human relationships and child and family life are all presented as they appear in relation to possible expenditures. In part iv the intimate relation between mill and household is dwelt upon.

The interest of both these books lies in the personal touch, the human element that is present throughout. Enough details are presented to make the facts and figures seem very real, something more than statistical aggregates. This impression of reality is greatly strengthened by numerous and well-chosen illustrations.

As the aim has been to present the results of a carefully planned investigation without any effort to draw far-reaching generalizations, the books cannot be easily summarized. They both show in a very strong light the effects upon general working conditions of a system that vests entire control in a large corporation and entirely eliminates the personal relation between employer and employee. When such a situation develops, it is no longer possible, as Mr. Fitch thinks, to

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divide responsibility. Whatever is good must be credited to the corporation. Whatever, on the other hand, is not good must be debited to the same account. Stock-buying policies, relief funds, pension plans, building and loan funds, low rent of company houses, low prices for coal, gas and water—all these and other advantages may be entered on the credit side. They are heavily discounted, however, when, as Mr. Fitch and Miss Byington show, they are offset by the increasing of unskilled and the decreasing of skilled employments, preference for "hunkies" and "ginnies" as a labor supply, reduction of wages in the face of increasing cost of living, tax evasion that throws the heavier burden on those that own their small homes, immobility of labor, partisan control of municipal and state government, and the repressive or spy system by which all movements toward organization immediately become known to the superintendents and are followed by the discharge of the leaders. Whatever may be the impression outside of the Pittsburgh district as to the beneficence of the policies adopted, there is no mistaking the attitude of the workers and their families as revealed by these writers. Whether in the mill, in the town resorts of the men or even in the workingmen's own homes, no word must be raised against the company. "It will reach the office." Mr. Fitch insists that this spy system is most carefully planned and is most effective.

That home life with real uplifting influences is quite impossible is made clear by Miss Byington. The study of rent leads to the conclusion that "taken together, these facts express fairly the desire of American and English-speaking European families to have houses which in size, sanitation and conveniences would make a normal and efficient life possible." The figures show that if the weekly income is over twenty dollars an amount may be spent for rent that is "none too large for the average family which desires sanitary conveniences and a sufficient number of rooms to insure privacy and the development of the home." The sum paid for rent by those who had less than twelve dollars a week income "did not provide bare sanitary surroundings." "Genuine strength of the family ideals" was manifest even in "simple and externally unattractive dwellings" (page 55).

The analysis shows some opportunities but no adequate provision for recreation and amusement. The library with its institutional side of club life cannot serve the twelve-hour-a-day man. Paid entertainments conducted by the lecture bureau held in the auditorium of the library were only "fairly well" attended, and later they were abandoned. "Aside from the lecture course there was almost no entertainment in Homestead the year of my inquiry that could be called cultural. The

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amusements in the main were the simple festivities of home and lodge and church, narrow in their round" (page 117).

As to the attitude of the steel workers themselves toward the present policy of management, Mr. Fitch has no doubt.

> The Pittsburgh steel workers are very nearly ready for a political movement. They are inwardly seething with discontent, and the time is not far distant, if indeed it has not already arrived, when with a leader who understands how to gain their confidence they will flock from the standards of the old parties in a way that will be a severe shock to the machine politician. The workingmen of Pittsburgh or any other American community could not be roused over night to the point of serious, premeditated, revolutionary violence. Agitation alone, however persistent, could never accomplish it; but if the treatment that the steel companies are now employing toward their workmen be indefinitely prolonged, it will be hard to predict the ultimate action of the workers. Under such circumstances, if there should ever be a violent outbreak of any sort, the corporation officials will not need to look far for the cause. Revolutions, however, do not necessarily involve violence. And through either the trade union or the political movement or through some other means, there is bound to be a revolution ere long that shall have as its goal the restoration of democracy to the steel workers [page 243].

Finally, turning to social considerations, we read:

> The final outcome of this régime of exploitation may not be known in this generation. It will do injury to the physical health not alone of individuals, but eventually of society. Even more serious, however, is its influence on the mental and moral natures of the men concerned [page 201].
>
> The causes that developed the present labor policy were, as stated above, economic in their nature. But a proper economic policy from the standpoint of the individual may be absolutely uneconomic from the standpoint of society. Such men as have plundered our forests and wasted our coal deposits have followed out an economic policy individually sound, but that policy is today denounced as at enmity with the public good. If the man who wastes and destroys *natural* resources is a public enemy, what of the corporations that exploit *human* resources?
>
> If the employees could be charged formerly with a share of the responsibility for conditions in the steel industry, that time has gone by. The employers accepted the full burden of that responsibility by driving out unionism, they have increased their accountability by their stern measures designed to retain for themselves the control now exercised.
>
> A repressive régime that makes it impossible for men to protest against conditions that are inimical to their welfare serves now, and has served since the destruction of unionism, to keep the employers in the saddle [page 206].

G. G. GROAT.

OHIO WESLEYAN UNIVERSITY.

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Der Kampf zwischen Kapital und Arbeit: Versuch einer systematischen Darstellung mit besonderer Berücksichtigung der gegenwärtigen deutschen Verhältnisse. By ADOLF WEBER. Tübingen, J. C. B. Mohr, 1910.—575 pp.

This book is the first volume of a work on the labor question. It covers conditions in Germany primarily, and refers only occasionally to England and other countries. It is intended to give an objective account of the existing struggle between labor and capital and its consequences. The exposition of the remedy, the means of attaining social peace, is reserved for a second volume.

In his preface the author says: "It has been my desire to write a book that would not only serve to bring forth critical remarks from a few professional reviewers, who were obeying necessity rather than their own spontaneous desire, but would also furnish accessible reading to those who are outside of the gild." This plan of presentation the author has followed consistently throughout. His style may be called journalistic; but this does not detract from the merits of the book, which is truly scientific, although toward the end it reveals a strong bias in favor of the employer. Some unaccountable errors have crept in; for instance, on page 60, a reference is made to St. Simon as the author of the *System of Economic Contradictions*, which of course is Proudhon's. Other similar errors are not few.

The book is subdivided into three parts. Part i deals both descriptively and theoretically with the conditions which are determining the struggle between labor and capital. Here the author's optimism as to the situation of the working class is very striking. Part ii takes up the actual struggle at the present time in Germany, and accompanies this by a brief historical survey of the struggle in the past. The author is careful to present both sides of the question, and to this end he gives almost equal space to quotations from labor papers and from employer's documents. This part of the book is the most objective and helpful: it gives an excellent insight into the activities of the organizations of labor and capital in Germany. Part iii is again theoretical, and discusses deductively the consequences of the struggle between labor and capital. Here the author noticeably departs from the treatment which characterizes the preceding portions of the work and displays a tendency which puts him unmistakably among the partizans of the employing class. While it must be admitted that not all the effects of trade-unionism upon the working class as a whole, organized and unorganized, have been definitely established by economic science, yet the

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author's thesis of the utter uselessness, nay, harmfulness of trade-unionism cannot be accepted as even resembling the truth. On page 532 he makes the assertion that trade unions force up the wages of their members at the expense of the women and house-workers; and in his sweeping condemnation of trade-unionism he is not willing to concede even that the organization of labor hastens inventions. Weber thus puts himself squarely in opposition to writers on the same subject who represent the social reform tendency, like Heinrich Herkner (*cf.* Herkner, *Arbeiterfrage*, Berlin, 1905).

Weber's own solution of the labor problem, which is to be given in the second volume, is in some degree foreshadowed in his affirmation that the wage-earners can better their position, not by a policy of restriction upon the employer, but by increasing the productivity of their labor. This suggests a program along the line of profit-sharing.

J. R. COMMONS.

UNIVERSITY OF WISCONSIN.

A History of Labor Representation. By A. W. HUMPHREY. London, Constable and Company, 1912.—ii, 199 pp.

Mr. Humphrey has exercized good judgment in concerning himself only with the history of the various movements which have culminated in the presence of forty-two Labor and Socialist members in the existing House of Commons. There are only two hundred pages in his admirable little book. Had he attempted to trace the history of labor legislation at Westminster since 1874, when Burt and Macdonald, the first of the Liberal Labor members, were returned to the House of Commons, six hundred pages would scarcely have sufficed, and there must have been delay in the publication of a book for which there has been an obvious need since 1906. A history of labor legislation since the second extension of the franchise in 1867—the extension that made possible the election of the first group of Liberal Labor members in the Parliaments from 1868 to 1884—must soon be forthcoming. In the meantime students of contemporary British politics are indebted to Mr. Humphrey for an excellent and scholarly presentation of the history of the organizations for the return of Labor members, from the London Workingmen's Association of 1866 to the Labor Representation Committee that was established at a conference at Memorial Hall, London, in February, 1900—the committee that was primarily responsible for the return of twenty-nine Labor members at the general election in 1906.

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Either in the text or in the appendices, Mr. Humphrey gives in full many of the manifestoes of these different organizations for labor representation. It is to be regretted that he only summarizes the manifesto of the London Workingmen's Association of 1867, which in full would have been valuable as a statement of working-class demands and political aims in the first year in which any large number of workingmen were in a position to exercise the parliamentary franchise. It is to be regretted also that there is no index, for Mr. Humphrey's little volume is otherwise well adapted for service as a handbook to labor politics in England since 1867. The appendices are singularly useful, for from them can be ascertained the number of Labor members in every House of Commons since that elected in 1874, and the fate of every Labor and Socialist candidate who went to the polls between 1868 and 1911.

Mr. Humphrey's sympathies are not continuously with the Liberal party; and one of the revelations of his book is that in March, 1906—just after twenty-nine members of the Independent Labor Party had been elected and, as a mark of their independence, had seated themselves on the opposition side of the House—there was an offer from the Liberals to finance a National Liberal Labor League. This offer was submitted to the Liberal Labor members only. Nothing came of it; and the old Liberal Labor group has dwindled down in the present House of Commons to two members.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

Die ökonomische Entwicklung Europas. Vol. V. *Die hofrechtliche Verfassung des Gewerbes und des Zunftwesens. Der schwarze Tod und seine wirtschaftlichen Folgen.* By M. KOWALEWSKY. German translation by M. B. KUPPERBERG. [Bibliothek der Volkswirtschaftslehre und Gesellschaftswissenschaft. Vol. XV. Berlin, Prager, 1911.—458 pp.

After an interval of two years the fifth volume of Professor Kowalewsky's large work on the economic development of western Europe appears in its German version. The present instalment of the work shows most of the faults and some of the qualities of the earlier volumes. In general it may be said that this part of the work, if marred by fewer slips than its predecessors, shows a smaller measure of original or at least first-hand research than they. Criticism is to a certain extent disarmed and baffled by the joint appeal of the translator and publisher contained in the preface, which reminds the reader of the difficulties of rendering the Russian original, and by their failure to indicate the

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date at which that original appeared. But the book needs no appeal for mercy: it stands on its own feet as an able and comprehensive survey of a great period. It is frequently careless and sometimes erratic, but there are worse sins than these.

The book falls into two very nearly equal parts. The first of these deals with the origin and organization of the gild system in western Europe and includes a chapter on "The Labor Question in the Middle Ages." The second part is devoted entirely to the Black Death and its economic consequences. Our author dismisses the theory which would connect the origin of gilds with some survival of Roman *collegia* and *sodalitia*, although he recognizes that in Rome and the Exarchate there may have been some survival of industrial organization and that Venice and Ravenna were influenced by Byzantine tradition in this respect. He points out that after the German invasions and settlement industry became manorialized, so to say. This condition extended to the towns, which were themselves divided among manorial lords, but here the free artisans ranged themselves against the unfree. In the rural manors there is no evidence of association or common execution of work. This leads to a discussion of Eberhardt's theory of *magisterium* and *fraternitas*, which Kowalewsky regards as neither new nor sound. It had been previously expressed in substance by Nitzsch in his *Deutsche Geschichte*, and for the rest it will not meet the case. The *magisteria*, in our author's view, were merely historical survivals of that manorial organization of industry which both in towns and villages had survived into the eleventh century. There grew up, on the other hand, among craftsmen feudally organized or held together, social and religious groups quite free in character and spontaneous in origin. In these are to be seen the origins of those gilds of craftsmen which, strictly subordinated to the municipal authorities or the merchant gilds, came into being to protect the free against the unfree craftsmen. This development, beginning at the close of the eleventh century, goes along with the rise of the towns and their emancipation from feudal control. The English gild system can scarcely be brought under this formula; but at present Dr. Cunningham's alien immigrants seem to hold the field undisturbed even by Professor Ashley. Our author passes over this controversy and its issue in silence.

Professor Kowalewsky deals next with the Bücher-Below controversy over the economic classification of mediæval craftsmen, and brings evidence from Italy and France to support Below's view that the craftsmen were not wholly without capital but as often as not purchased the raw material and worked for the market. In Italy, in the thirteenth century,

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there was a tendency toward a triple arrangement of merchant, middleman and artisan, although earlier those who worked for the market and those who worked up customers' material had belonged to the same associations. Somewhat similar conditions existed in France.

The regulation of prices, in this period, went along with that of wages. Both had the same end, namely, to prevent landlords and middlemen from lowering the cost of production, to preserve traditional uniformity and to prevent the organization of industry on a large scale. But the middle ages did not invent the idea of a maximum price, which can be traced back to the time of Diocletian.

A very interesting appendix contains an analysis of the statute of the gild merchant of Brescia and of that of the apothecaries' gild of the same town, dating from the fourteenth and fifteenth centuries respectively. The merchant gild included and regulated industries of various sorts, that of the apothecaries among them. When the apothecaries came to form their organization, they modeled it on that to which the merchant gild had accustomed them. But their statute required and received the sanction of the merchant gild, which retained its police power over them and the town authorities.

Our author's exposition of the character and consequences of the Black Death in western Europe does not appear to contain very much that cannot be found in the ordinary books. Still, it is presented in a clear and agreeable fashion, and the archives of Venice, Barcelona and Valencia have yielded some interesting results. In Spain, after the pestilence, the lords met the need for labor by using slaves, generally Saracens. This amounted to the rejection of the dualistic manorial system and was highly objectionable to the occupying and cultivating classes. In their interest, and because they furnished a convenient means of checking the feudal aristocracy, the crown intervened, both in Aragon and in Castile, to maintain the principles of personal freedom and civil equality. On the other hand, the absence of a class of small farmers with capital enough to take over leases, as in England, threw the land made available after the plague into the hands of townsmen, who worked it by means of servile labor. In these circumstances the government carried through a labor policy, which, as our author believes, kept down the normal rise of wages by one or even two-thirds. The argument which he here brings against the wage-fund theory and the "iron law of wages" appears to be of the weakest. It consists, if the reviewer is not mistaken, in asserting that the plan of regulating wages by statute, inaugurated by Pedro IV of Aragon in 1349, must have been successful, because when similar conditions arose in 1381 and 1392 it was resorted to again.

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The Venetian archives show that Venice almost alone among European states met the consequences of the Black Death by an intelligent economic policy. All the old restrictions were temporarily suspended in favor of a free economic competition. Foreign settlers were attracted by the offer of easy access to the gilds and, indeed, to all industrial and commercial rights and even to citizenship. By this means the population of Venice and the Terra Ferma was recruited; and in a very few years the conditions prevailing before the pestilence had been restored, and it was possible to return to the old system without any of the social upheavals that afflicted other and less enlightened governments. A somewhat similar policy was pursued at Siena; and at Orvieto, which had become a populous pilgrim-station, they hit upon a plan for adjusting wages and prices by means of a sliding scale.

The chapters devoted to England are perhaps less satisfactory than any other part of the book. Our author contends that it was not the law of supply and demand that frustrated the attempt to regulate wages by statute, but the determined and organized opposition of the industrial and agricultural laborers. One would be glad to know how the economic law could have worked but through the refusal of the laborers to accept less than they believed conditions warranted them in asking.

The final chapter, which comprises Germany, Austria and Switzerland, is confessedly incomplete and provisional and need not detain us.

The criticisms of Professor Kowalewsky's methods which were offered in earlier numbers of this QUARTERLY (volume xxiii, pages 162–166, volume xxiv, pages 703–707) apply with equal force to the present instalment of the work and need not be repeated. As usual, most of the rather numerous defects seem to be attributable to haste and carelessness in making use of authorities. A couple of instances will serve to illustrate this and at the same time to bring out the insight and *flair* of our author. He appears (pages 175 *et seq.*) to follow Professor Ashley's view of a violent conflict between the merchant and craft gilds in England, and seems, as I have said, to be ignorant of the controversy between that writer and Dr. Cunningham. On the other hand his whole view of the beginnings of industrial organization, first as a protection of free against unfree labor and then as a process of peaceful differentiation of functions, approaches very nearly the conclusions reached by Dr. Cunningham. Again, with Gross's *Gild Merchant* before him, he can affirm (pages 97, 98) that most English towns had a gild merchant in the eleventh century, while that of Winchester was founded in 856 in the time of King Ethelred (*sic*). On the other

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hand he appears to have reached for himself Gross's own conclusion, that it is unnecessary to seek any institutional parent for the merchant gild and better to regard it as the spontaneous expression of the constant human tendency toward association.

Some minor criticisms may finally be offered. It is rather late to be speaking of the Hunnish invasion as the cause of the foundation of Venice (page 78). It is perhaps not too much to ask for some indication of the date and character of the Russian chronicles upon which he bases his theory of the origin of the plague (page 224). An ordinance of Philip the Fair in 1321 (page 385) rather takes one's breath away, and the English sees of "Rougham" and "Eeling" do not immediately disclose their identity (page 401). Then borough english scarcely "prevailed in every English county except Kent with its gavel kind" (page 403); and it is scarcely accurate to speak of the United States of America at the end of the seventeenth century (page 424, note), or to describe the regnal year 35 Edward III as 1360 (page 426), since it extended to the end of January, 1362. Finally, I have observed printer's errors on pages 65, 69, 79, 112, 140, 176, 223, 229, 239 (*bis*), 310, 314, 364, 401 (*bis*), 403, 412.

The publisher renews his promise of an index of the whole work, which is to accompany the forthcoming sixth and final volume.

GAILLARD LAPSLEY.

TRINITY COLLEGE, CAMBRIDGE.

The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720. By WILLIAM ROBERT SCOTT. Volume II: *Companies for Foreign Trade, Colonization, Fishing and Mining.* Volume III: *Water Supply, Postal, Street-lighting, Manufacturing, Banking, Finance and Insurance Companies, also statements relating to the Crown Finances.* Cambridge, University Press; New York, G. P. Putnam's Sons, 1911.—x, 504; xii, 563 pp.

At the time of writing, the reviewer has not yet received the first volume of this work, the issue of which is announced as delayed "through technical reasons connected with the printing." This volume "will record the general development of the joint-stock system in Great Britain and Ireland up to 1720, at the same time bringing it into relation with the chief social, political, industrial and commercial tendencies which influenced it." The present volumes comprise studies of the history of the particular companies, classified according to their fields of activity, as indicated in the sub-titles above. The origin,

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organization and development of each company are described, with full annals of its fiscal history and, in many cases, tabular summaries of capital stock, price quotations and dividends.

Readers conversant with Scott's edition of the records of the New Mills Cotton Manufactory, in the Publications of the Scottish Historical Society, and with his various periodical articles, knew his competence in the field of industrial history before the present work appeared; and yet even these may well be surprised by the contents of the two volumes. They are extraordinary in scope, covering all the large private and semi-public undertakings, and many small ones, in the British Islands, from the sixteenth to the early part of the eighteenth century; and they are based on an extraordinary fund of information. The facts are drawn not only from the great mass of printed material, including newspapers and pamphlets, but also from a great variety of manuscript sources: records of the public administration, collections in the large libraries, records of law suits and—most noteworthy of all—account books of the companies concerned. The work is one of the most important contributions which has been made to English economic history: so much may safely be asserted before the appearance of the first (and concluding!) volume. Yet as the work now stands, it is a promise rather than a fulfilment. It enriches our knowledge of the details of fact and stimulates many questions of principle, but it leaves reserved, for the author or for another, the work of construction which will make the book important as a contribution not only to English economic history but to economic history and to economics in general.

In volumes of such varied contents the students of a number of different subjects will find interesting material. The critic of modern corporation finance will think that the saying of Pollexfen, in the seventeenth century, that "companies have bodies, but it is said they have no souls; if no souls, no consciences," is abundantly justified by the records of that time as well as of this; he will find accounts of promotions and underwritings, of dividend and stock manipulations, and of reorganizations, curiously like, and yet unlike, those of the present. With his thoughts fresh on modern trusts and rebates, he will sympathize with the demand of a Scottish linen-manufacturing company which asked, in 1693, for a royalty of twopence on every ell of linen sold in Scotland, that it might maintain servants to measure and inspect linen and give instruction in its manufacture! Students of banking and of public finance will find considerable additions to the current knowledge of the history of those subjects. Even the student of theoretical economics may well reflect upon the fluctuations in the rate of interest ("net" interest), as estimated by the author from the statistical material at his command.

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The two volumes give the reader a vivid realization of the rapidity of change in the English industrial organization in the seventeenth century, particularly in the latter part. They show processes and results, but in large part they leave causes undisclosed. Whence came the fund of industrial capital which then took form? We see the operation of influences proceeding from Holland, France and Germany; we see the contribution of the expanding postal system and banking system; but we fail still to see clearly the original investor and the precise nature of the links uniting him with the "big business" of the times. We learn much about mining and industrial enterprises, including surprising statements about the extent of undertakings like the Mineral and Battery Works, employing 8000 hands, and the Royal Lustring Company, employing 6000. We still feel uncertain of the character and position of the laborer. And when the author in these two volumes does permit himself some general speculations, he does this incidentally, and so briefly that he sometimes is not intelligible or not convincing (as, for example, in volume iii, pages 162, 258). Until the appearance of the remaining volume it is, however, manifestly unfair to criticize the author for what he has not done. Already he has done enough to win a high place among those who have written on English economic history.

CLIVE DAY.

YALE UNIVERSITY.

Railway Rate Theories of the Interstate Commerce Commission. By M. B. HAMMOND. Cambridge, Harvard University, 1911.—vi, 200 pp.

Problems in Railway Regulation. By H. S. HAINES. New York, The Macmillan Company, 1911.—vii, 582 pp.

The Railway Library, 1909, 1910. Edited by SLASON THOMPSON. Chicago, Bureau of Railway News and Statistics, 1910, 1911.—403, 456 pp.

Concern with the general question of railway regulation links together all of the above volumes. Their joint interest is not decreased by the fact that they have been written, or compiled, from the respective standpoints of a professional economist, a retired man of affairs, and an official railway apologist.

Professor Hammond has essayed the difficult task of classifying the more significant decisions of the Interstate Commerce Commission, from 1887 to 1906, under the heads of their determining factors.

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His treatment resolves itself into a series of sections dealing, in order, with value of commodity, cost of service, distance, natural advantages of location, competition, class and sectional interests and fair return on investment. The volume concludes with a statement of what the author regards as a comprehensive theory of rate-making. He has earned the gratitude of his fellow economists for the able way in which he has classified and pigeon-holed the commission's ideas on rate-making, although they may not find it easy to agree with every detail of his classification. Most economists have had but a hazy conception of the real nature of the work done by the commission, and for such a mental attitude they will no longer have any excuse.

Appreciating fully the many good points of the work, the reviewer thinks, nevertheless, that its value would have been increased by a somewhat more careful distribution of emphasis. To some extent the essay is built around an assumption that, between 1887 and 1906, the commission executed a *volte-face* from value of service to cost of service as the proper basis of rate-making. As regards the early attitude of the commission this assumption is more than doubtful. A perusal of the early decisions of that body shows clearly that cost-of-service considerations exercized, from the beginning, important influence upon its conclusions, and the language of its first report is not, as Professor Hammond would have us suppose, inconsistent with subsequent practice. As the present volume itself establishes, there is no evidence of an attempt on the part of the commission, prior to 1906, to determine the reasonableness of individual rates on the basis of a pro-rate of all costs. The costs of service to which the decisions of the commission so frequently make reference in this connection are the costs of movement, the expenses obviously assignable to particular acts of transportation. The commission has lately shown a disposition to favor more extensive use of the cost-of-service principle in its broadest sense (*cf.* Rate Advance decision, Western carriers, February, 1911); but throughout the period of Professor Hammond's comparison (1887–1906) there seems to be little ground for his contention as to a marked change of policy in this particular respect.

The author quotes freely from the decisions and, as a rule, does so with discretion; but in some of the cases considered one doubts whether the passages selected are sufficient to give an adequate idea of the attitude of the commission. Of course, in the minute examination of detail which an investigation of this sort demands, it is a matter of peculiar difficulty consistently to maintain a proper perspective.

The final paragraphs of the volume, as has already been indicated,

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are devoted to a statement of Professor Hammond's own conclusions as to proper methods of rate-making. The student, however, can hardly be expected to accept the fact that the commission employs one or another of these methods for the determination of reasonable rates as conclusive of their relative economic merit. The dogmatic statement of the theory destroys the significance that might otherwise have attached to it, and the symmetry of the essay is impaired by its inclusion in its present form.

In spite of these defects, the value of Professor Hammond's investigation remains unquestionable. The pioneer work embodied in his little volume will be of great service to students, and it is sincerely to be hoped that he will continue his researches and, at some future time, increase our debt to him by throwing still more light upon the subject.

The second volume under review, written by a former vice-president of the "Plant System" of railroad and steamship lines, is a somewhat ambitious attempt to present an historical and critical examination of the problems of railway regulation as a whole. A survey of the growth of these problems, covering some half-dozen chapters, is followed by a series of studies of the particular problems, grouped under the heads of incorporation, finance, construction, operation, traffic, discrimination, rate-making, capital and labor. Some forty-six pages of statistical tables are added in appendices.

In the treatment of these varied topics a certain lack of proportion is discernible. The historical portion of the volume, though interesting —the chapter on "The Period of Formation," indeed, is a model of its kind—might, with advantage, have been kept within narrower limits, and the space thus made available might well have been devoted to discussions more pertinent to the author's general purpose. It would then have been possible to find place for an estimate of the significance of state regulation as compared with federal regulation, for a critical discussion of federal incorporation, and for a consideration of the economic influences of railway consolidation. Then also the author could have met more squarely the question: what constitutes a reasonable rate of dividend? as well as the associated problem: how may the diminution of excessive dividends be accomplished without injury to progress? And his readers would have been glad to have his opinion upon state regulation of railway construction. Interesting as are the remarks of Mr. Haines with reference to car supply, unjust discrimination, labor discipline and so forth, they fail to be as effective as he doubtless could have made them. Of course, in a single volume covering so wide a field, exhaustive discussion of single questions is

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not to be expected, but it is unfortunate that adequate treatment of important topics should have been sacrificed to less essential points. Generally speaking, the theoretical side of Mr. Haines's subject is not presented quite as successfully as the historical.

A substantial portion of the volume is devoted to the rate problem. While favorable to public regulation, the author is of the opinion that it has checked the tendency of the railways to make rates in the public interest and that virtual petrification of railway tariffs has resulted. Regulation should not mean control; in other words, the government should use its power only to facilitate the adaptation of the railway economy to its changing environment. The federal government has extended its control of railway administration even to details; and its control is one that is irresponsible to railway stockholders, that ignores economic principles and that shapes measures with an eye to the maintenance of political prestige. While all of his readers may not agree with Mr. Haines in these conclusions, they will at least be inclined to give them serious consideration, because of his evident effort to free himself from such bias as a railroad career might possibly have tended to give him.

However open to criticism its details may be, there can be no doubt that in the present volume Mr. Haines has put before us, in an interesting fashion and in a style that might serve as an example to many an academic writer, ideas that are well worth consideration.

Last upon our list come the year-books compiled by that doughty champion of railways, Mr. Slason Thomson. In these volumes (which are distributed for the cost of postage) he is making a commendable endeavor to preserve such fugitive railway literature as possesses more than temporary value. The collection for 1909 is especially worth while, for several of the papers are of a high order of merit. The educational value of these collections to the public and to railway men might be increased, however, by the inclusion of an occasional article less favorable to the interests represented by the editor, and the prestige of the series might be greater if its propagandist purpose were less evident. Each of the two issues contains a review of the current year's statistics, in which Mr. Thompson vigorously belabors the statistical department of the Interstate Commerce Commission for its shortcomings. He may be hypercritical at times, but he is not always without justification.

ERNEST RITSON DEWSNUP.

UNIVERSITY OF ILLINOIS.

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Allgemeine Volkswirtschaftslehre. By WILHELM LEXIS. [Die Kultur der Gegenwart, Part II, Vol. X, 1.]. Berlin and Leipzig. B. G. Teubner, 1910.—259 pp.

As indicated by its place in the encyclopædic work on *Modern Culture*, the *General Economics* of Professor Lexis is designed to acquaint the philosophically trained reader with the methods and the principal results of economic science. It therefore differs widely both from the comprehensive German treatise and from the English and American text-book. Compared with the former, its field is very restricted and its method of treatment unduly abstract. Compared with the latter, it lacks definiteness in the development of its argument and displays little regard for the principles upon which pedagogical effectiveness depends. There is something about the work that reminds the reader of Senior's *Political Economy*, which was likewise prepared as a part of an encyclopædia of culture. There is the same intention of giving concise expression to an existing body of thought and the same tendency toward a new organization of the material, determined chiefly by logical principles. In both cases the finished work turns out to be rather an expression of the author's peculiar views than a faithful presentation of generally accepted doctrine.

According to the prospectus the work was to consist of three parts: "Economic Evolution," "Economic Method" and "The Economic Process." In the completed work, the first two parts are crowded into a space of twenty-eight pages, full of common-sense observations, but devoid of the quality of philosophical thoroughness which we have come to expect in a German treatise on economics. The discussion of the economic process, which takes up practically the whole book, covers the field of value and price, money and credit, and distribution. Fundamentally the discussion is classical in character, but the influence of the historical school is everywhere in evidence.

The theory of value presented by Professor Lexis is essentially a demand-and-supply theory. The marginal-utility doctrines receive little attention, and the theories that lay chief stress upon cost of production are subjected to somewhat drastic criticism. Individual utilities and individual costs, according to our author, play a relatively unimportant rôle in the determination of exchange ratios on the market. The price-making forces are numerous; it is now one, now another that plays the determining part. Fruitful price theory, in the author's opinion, can be constructed only after a thorough study of the market facts. From this statement of the case one might be led to infer that

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Lexis expresses the view, rather widely held in this country, that generalizations in the field of value and price are practically worthless. This inference is not justified, however, by the text. The author's value theory contains practically no elements not recognized by the orthodox English and American economists.

In his theory of money and credit Professor Lexis follows closely the accepted doctrines. The value of money, absolutely considered, is the product of an historical evolution that we cannot fully explain; changes in the value of money depend, on the one hand, upon changes in the amount of money and its substitutes and, on the other hand, upon the amount of work it has to do. This theory, which is obviously a form of the quantity theory, is not regarded as a sufficient explanation of changes in the price level under existing conditions. Professor Lexis is to be numbered among those economists who regard the credit substitutes for money as sufficiently elastic to make practically negligible the effect of any ordinary increase or decrease in the volume of standard money.

Perhaps the most interesting part of the work is the treatment of distribution. The social income, which includes both the consumption goods placed in the hands of the ultimate consumer and additions made to the permanent stock of productive goods, is subjected to a primary division into labor incomes and property incomes. The principle governing this division is "relative economic power" (page 147), a concept which nowhere in the book receives the elucidation which an American reader finds desirable. One appears to be justified in regarding "relative economic power" as something in part mechanical, in part social-organic. Increase in labor supply weakens the economic power of the laborer; strengthening of the organization of labor increases it, even with labor supply unchanged. What other elements may enter into the concept the reader must discover for himself. At all events, the division of the social income between labor and property upon this basis has, in the author's view, a definiteness comparable to that of the wages-fund theory. This division made, the owners of different classes of income-yielding property effect, through struggle, a distribution among themselves of what remains after labor has been paid (*cf.* pages 82, 150).

In his treatment of the returns to capital the author insists vigorously that there is no such thing as a normal rate. There is a minimum rate, determined by the yield of loan capital in perfectly safe investments. What determines this loan rate is the relation of demand and supply in the loan-fund market. Some slight notice is given to the fact that

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undervaluation of future goods has something to do with the rate of interest on consumption loans. The phenomenon of capitalization is also touched upon, but no attempt is made to explain the origin of the rate of interest employed in capitalizing an income. It is hardly too much to say that for Professor Lexis the interest problem does not exist at all.

The final section of the work is given up to a forecast of the future of modern economic society. In the author's view, no radical change in the character of the economic system can be expected for a long time to come. Capitalistic industry has many conquests still to make even in old countries. When the industries in these countries are fully organized and supplied with capital, there remain undeveloped parts of the world to absorb new accumulations. In the end this demand must also slacken, and accumulation must proceed more slowly. Developing technique will, for a long time to come, make adequate provision for an increasing population; but here, too, a limit is set by the increasing difficulty of producing supplies of food. Economic society is tending toward a stationary condition; according to the forecast of Lexis, however, not one of stagnation and universal misery, but one in which moral restraints and good will and coöperation will secure for the human race a broad diffusion of welfare.

ALVIN S. JOHNSON.

STANFORD UNIVERSITY.

Disturbing Elements in the Study and Teaching of Political Economy. By JAMES BONAR. Baltimore, The Johns Hopkins Press, 1911.—145 pp.

Forty, or even twenty-five, years ago, when economists were concerned mainly with the nature of their science, its fundamental principles and the method appropriate to it, brief discussions of these questions by the leaders of economic thought, such as Cairnes's *Character and Logical Method of Political Economy*, Bagehot's *Postulates of Political Economy*, Marshall's *The Present Position of Economics* and Sidgwick's *The Scope and Method of Economic Science*, were not uncommon. Today, when the great body of economists, with a few shining exceptions, are immersed in the study of the facts of economic life and in the search for some workable solution of its pressing problems, such discussions are rare, and, therefore, all the more welcome and helpful, particularly when addressed by a mature thinker of keen intellect and broad learning to students who are just starting on their independent work and, under the influence of the spirit of the times, are

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apt to be drawn away from the consideration of the larger aspects of their subject.

The Study and Teaching of Political Economy comprises five lectures, delivered to the economic seminary of Johns Hopkins University, under the titles: "Liberty, Equality, Fraternity"; "Government is Founded on Opinion"; "It may be so in Theory"; "Figures can Prove Anything" (the figures referred to being figures of speech); and "In the Long Run." While in its spirit and purpose the work belongs to the class of books mentioned above, it deals primarily not with the nature and principles of the science itself but with the attitude of mind proper to the scientific economist. The author tells us in the preface that his purpose is to put the student on his guard against the errors which creep into his reasoning from a popular political philosophy, from want of any political philosophy, from mistaken aversion to theory, from the shortcomings of technical language and from the wrong handling of distinctions of time.

It is difficult to convey in a few words an idea of the content of the volume more definite than that indicated by the titles of the chapters and the statement in the preface. It must be read to be appreciated. No general thesis is maintained, and the method is informal and suggestive rather than systematic. Emphasis is laid on the necessity of exact analysis of ideas and definition of terms, of theoretical reasoning tested by comparison with the facts of actual life, of preserving the independence of economics as a science, recognizing, however, its close relationship to other sciences and to other aspects of economic life, and of the acceptance of some political philosophy as the standard by which to measure the worth of economic policies. The author himself inclines to the acceptance of the principles of individualism, not the superficial individualism comprised in liberty and equality as understood by Smith and Bentham and their immediate successors, but real individualism tempered by fraternity. The credit for the introduction of the last named element is given to John Stuart Mill. At the close of the first chapter we read:

> What is most earnestly to be desired for both of you, both Canada and the United States, if it is not too late for the latter, is that the independent worker should remain the typical figure in the Nation. With due care and pains on the part of both of you there need not be any proletariate at all. Without the due care and pains that proletariate will come.

In the closing chapter he goes so far (certainly farther than most economists would go) as to say: "It seems possible that, if the [United]

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States had been thorough-going in their *laisser faire*, they would not have seen such a phenomenon as a millionaire or a *prolétaire* at all." But this does not imply an acceptance of the policy of *laisser faire* under existing conditions.

> If an appeal for unlimited commercial competition is examined, it will probably be found to mean either that we are asked to begin with a *tabula rasa* and mere struggle for existence—which we cannot do without ceasing to be civilized—or else that the existing legal distribution of property, resulting from a history in which there was little *laisser faire* and every kind of interference, is to be taken as it is, undisturbed, and the very unequally equipped competitors are to pursue their careers in business without any *new* interference.

The matter is familiar, and we may not always agree with the writer's point of view, but the presentation of the subject is marked by a charm of style, a wealth of illustration from the history of economics and a keenness of insight that make the book delightful reading and a real addition to our economic literature. Full notes and a table of contents have been added to the lectures.

HENRY B. GARDNER.

BROWN UNIVERSITY.

Les Expropriations et le prix des terrains a Paris, 1860–1900. By MAURICE HALBWACHS. Paris, Société Nouvelle de Librairie et d' Édition, 1909.—415 pp.; tables, graphs and plans of Paris.

The author of this work, with great labor, has made a detailed study of all the expropriations of land in Paris during the forty years from 1860 to 1900. These expropriations took place chiefly in connection with the construction of the great boulevards. He has studied in detail the sales of land, the tearing down and the construction of buildings in all Paris and in the separate arrondissements or wards. He gives tables of the relative populations of these wards, and establishes certain currents of population by which the city expanded. He constructs very carefully a curve of prices of land for all Paris and for three regions of Paris, and devotes a large part of the book to a comparison of the curve for all Paris with curves showing the general price level of all commodities, the number of sales of land, the railway receipts of France and finally, the number of expropriations and the amounts of the indemnities. He compares these curves almost year for year, but does not attempt to use any of the newer methods of statistics for comparing such data. As a result he is able to give only vague and uncertain

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conclusions after pages of comparison. It is evident, however, that the general trend of the price of land followed the increasing prosperity of the country, as shown by the railway receipts, and was influenced by the general price level only during the depressions following panics, when the price of land either sank or rose less rapidly.

The author finally comes to the number of expropriations, and he thinks every great rise in price in Paris was due to the great number of expropriations which accompanied the building of the boulevards. It seems to the reviewer that every maximum in the price curve for all Paris is caused by a great number of sales of land in the center of the city, where land is most valuable; and in fact the author's tables show that the price was frequently lower in the central districts at these very times of maximum average price. He has taken as the price of land in Paris the average of the prices of all lands sold, so that changes in the prices of land not sold, such as would be shown only by increased rent, remain without representation in his curve. This seems to be a serious defect in his work. He seems to realize that the average so obtained gives a local color, but he insists that only the land sold shows the demand for new land. Here it is difficult to agree with him. His curve no doubt gives the general trend of land prices, but for a year-by-year comparison it seems useless. He himself admits that on examination of the separate districts the relation between expropriation and price is not so clear, and that often an expropriation in a certain district took some twenty years to work out its full effect.

It seems evident that the planning of a new boulevard, destined to be an artery of commerce and trade, must increase values along that boulevard and neighboring streets, and that this increase will often be sudden because of the speculation thus aroused.

The author describes very vividly and accurately the work of the speculators, in forecasting the evolution of the city and the rapidity of the movement. He insists that the speculators have nothing to do with the change of price in land, but that they themselves are the product of social forces which cause this evolution. He shows very clearly the opposing tendencies of tenants to resist higher rents and yet to seek better lodgings, while the proprietors seek to increase the rents or else the number of tenants. These tendencies have opposite effects on rich and poor, and in reality prevent all speculation in poorer sections of the city, though Dr. Halbwachs shows how they might be made profitable for speculation in poor sections also. This part of his work is far more interesting than the statistical part. But the statistics he has been at such pains to collect should be of great value if used according to modern methods.

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The depopulation of the center of Paris is ascribed entirely to the boulevards, and not to the needs of an increasing business area. The author seems to think that the westward growth of the city was due to the factories and shops on the east, whereas other authors suppose both of these phenomena to be due to the prevailing west wind, which causes the residence population to seek the side that is free from the dust of the city.

C. D. THOMPSON, JR.

COLUMBIA UNIVERSITY

Rural Denmark and its Lessons. By H. RIDER HAGGARD. London, Longmans Green and Company, 1911.—335 pp.

The Thirteenth Census shows that during the last decade the urban population of the continental United States has increased 34.9 per cent, while the rural population has increased only 11.1 per cent. Every state shows an increase of more than 10 per cent in the urban population, while in the rural population fifteen states show an increase of less than 10 per cent and seven states an actual decrease. In only two states did the rural population increase faster than the urban. The recently published figures of the Danish census show that during the same decade the urban population of Denmark proper has increased 15 per cent and the rural population 10 per cent. Thus, while in the United States the urban population has increased somewhat more than three times as fast as the rural, in Denmark it has increased only one and one-half times as fast. In view of the fact that the United States is still a sparsely settled country with climatic conditions exceedingly favorable to agriculture, whereas Denmark is densely populated, with conditions of soil and of climate which are unfavorable to agriculture and with one-fourth of the population concentrated in its capital city, these comparative statistics are indeed striking.

Whether or not one is ready to accept the author's dictum that "the flocking to the towns means the ultimate destruction of the white races if it continues unchecked," he will agree that the general movement from country to city is a matter of vital importance, and that no effort should be spared to determine its causes and to discover means of checking it; and he will therefore be deeply interested in learning how Denmark has, at least for the time being, successfully solved this problem. Sir H. Rider Haggard tells us that, but little more than a generation ago, the Danish peasants were poverty-stricken and discouraged and were constantly decreasing in number through migration to the towns and through emigration; and he shows, in a most interest-

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ing way, how, despite uncongenial climate and niggardly soil, this same peasantry has been transformed into a prosperous and contented people, with the movement to the towns and emigration to other countries practically checked.

The nice critic might say that the book is scrappy, that many of its statements are only personal opinions, and that it contains much that is not germane to the subject. But although the book lacks logical arrangement and the reader at first gains the impression that it is the product of a fortnight's tour, he discovers on closer reading that as far as it goes it is based upon careful study. Nor will he fail to read the digressions and to profit thereby. And if certain statements appear naïve to the American reader, he must remember that the author is an Englishman writing for Englishmen. Moreover, since what Mr. Haggard says he "believes" or "thinks" is usually a fact, his lack of positiveness should be attributed to modesty rather than to inadequate information.

The excellence of the book is due to the fact that the author's keen power of observation, coupled with an intimate knowledge of practical agriculture, has enabled him to point out the factors that have made it possible for the Dane to succeed where the Englishman has failed. He notices and shows the significance of details that would escape the attention or fail to arouse the interest of the ordinary observer, and again and again he emphasizes the fact that the English farmer's failure to give attention to such details has in no small degree been his undoing.

The author maintains that Danish agriculture is "wonderfully successful." He attributes its success to the peoples' High Schools, which have made the Danish peasantry the most intelligent in the world; to the fact, largely the result of wise governmental policy, that most Danish peasants now own the land which they till; and to coöperation, which in Denmark has attained an unparalled development and without the aid of which all attempts to build up a prosperous rural population must have failed.

The chapters on "Small-holding Ownership" and on "What might be and what is" deserve special mention. In the former the author gives a somewhat detailed account of the government's successful attempt to build up a small-holding class and draws comparisons with similar attempts on the part of the British government. He agrees with prominent Danish authorities that about one-half of the small-holders set up by the state succeed and about one-third manage to live, while the rest fail; and he concludes that if this is the case in

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Denmark, with excellent schools, highly developed state aid and efficient coöperation, in England, where all these are practically lacking, such a movement would prove little short of a fiasco. In the latter chapter the author pictures the changes which could be wrought in England if Danish conditions could be reproduced. This chapter is exceedingly interesting and suggestive, whether the reader is willing to accept all the conclusions and implications or not. Whether such conditions as obtain in Denmark can ever be created in England, the author doubts, because

> the attitude of the two peoples towards the land is fundamentally different. The Danes look upon their land as the principal means of livelihood and as a nursery which above all things should be consecrated to the upbringing and home-life of a healthy and numerous rural population—in short, as a business proposition in which the nation is most vitally concerned;

while the English "look upon our land, or much of it, as a pleasure proposition in which the individual only is concerned."

JESSE E. POPE.

WASHINGTON, D. C.

The Annexation of Texas. By JUSTIN H. SMITH. New York. The Baker and Taylor Company, 1911.—ix, 496 pp.

This volume is the first-fruit of the author's researches into the history of the Mexican War. When completed, his work will be indeed encyclopædic, if he follows the same method of treatment that has been employed in the present monograph. A glance at the footnotes shows the wealth of material upon which the text is based. Newspaper files, the writings and speeches of contemporary statesmen, official documents and especially diplomatic correspondence have been diligently examined. Mr. Smith has indeed conducted a most exhaustive investigation, and one hesitates to call his treatment final only because the subject is exceedingly complex and, as the author himself observes, "almost every foot of the ground is controversial." His habit of accumulating evidence and loading the text with quotations does not, it must be admitted, always make for clarity. Material is not infrequently given to us in undigested form, and the text is in places unnecessarily expanded. One is grateful, however, for occasional lucid summaries.

Mr. Smith disproves the oft-repeated charge that the revolt of Texas from Mexico was instigated by the slave power in the United States and fomented by the national government—an interpretation of history

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caused by the prejudices and passions aroused by the slavery question. The revolt is viewed as a spontaneous movement of the inhabitants of Texas, fully warranted by the tyranny and cruelty of Santa Anna—as "not so much revolution as resistance to revolution." That no powerful interest in the United States was forwarding the revolt as a preliminary to annexation is most clearly proved by the state of public opinion after the proposal of Texas to join the union met rebuff during the administration of Van Buren. Mr. Smith describes the general neglect of Texas in the United States from 1840 to 1842, revealed by an examination of the newspaper files, as "astonishing."

Withdrawing her offer of annexation, Texas devoted her diplomatic energies to securing favorable treaties with European governments, the most important of which was that with Great Britain, concluded in 1842. Mr. Smith discusses the possible effects of the development in the Southwest of a large and expanding nation in intimate relations with England.

It was the fear of British influence in Texas, and particularly the belief that Great Britain was trying to bring about the emancipation of the slaves in that state, that caused the American government to take up in earnest the subject of annexation as a means of checkmating British designs. Senator Benton referred to the "pretended London abolition plot" as an invention of the southern mind to justify the annexation of Texas; but the evidence adduced by Mr. Smith permits of no doubt on this subject. British policy was working strongly to effect the destruction of slavery in Texas. British statesmen and diplomats were influenced probably as much by economic as by ethical considerations. They were coming to the conclusion that the free labor of their colonies could not compete successfully with the slave labor of the southern states, and they hoped that the abolition of slavery in Texas would lead to abolition of slavery in the United States. An independent and prosperous Texas, moreover, opened up the prospect of a great and permanent supply of cotton outside of the United States. The London *Herald* stated frankly:

> We do wish to see slavery abolished in the United States, not merely upon moral but upon commercial grounds also. These commercial grounds . . . are as much political as commercial. While the United States shall have the monopoly of the supply of raw cotton, they will hold in their hands the means of disturbing the social state of all the manufacturing countries of Europe, . . . but the monopoly of the production of raw cotton cannot be very speedily taken from the States while these States retain the advantage of slave labour.

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Mr. Smith gives the substance of a letter written by Senator Walker and printed early in February, 1844, in which "every ember of suspicion and ill-will toward England was deftly fanned." Thousands of copies were at once circulated, and it was much read in the course of the presidential campaign in 1844.

In considering the fate of the annexation treaty signed by Calhoun as secretary of state and by the Texas representatives at Washington, Mr. Smith emphasizes the influence of party politics. It was Tyler's treaty, and there was an unwillingness in both parties to allow Tyler the credit of acquiring Texas. Calhoun's share in the treaty was such that some senators were afraid that its ratification would cause a dangerous increase in his popularity. Anti-slavery sentiment and reluctance to increase the power of the South must of course be taken into consideration. The Whigs, moreover, had just named for the presidency Clay, who was on record as opposed to immediate annexation, and the Whig senators were obliged to vote against the treaty. On the whole Mr. Smith concludes that "the concomitants rather than the essentials of the treaty caused its rejection."

To determine precisely the popular verdict on the question of annexation by an analysis of the vote in the election of 1844 is impossible. There was more than one issue in the campaign. The personalities of the candidates, especially of Clay, counted for much, and the popular vote was very close. An eminent authority on Texas, Professor Garrison, believed the vote to be an approval of annexation. Mr. Smith, on the other hand, interprets it as a defeat for the policy of immediate annexation. In his opinion the election of Polk was rather the cause than the result of a majority sentiment in favor of annexation.

A perusal of these pages suggests a question of the first importance: Was the annexation of Texas necessary to preserve the Union? While the treaty was pending there was much talk in the South, particularly in South Carolina, of secession, if annexation were defeated. Mr. Smith declines to believe that this talk was mere bluster. He regards it as a premonition of what actually occurred sixteen years later.

> Had the project of annexation been definitely rejected by the North, she [Texas] would perhaps have caused the dismemberment of the American Union and the formation of a new confederacy, including herself, the the southern states and a large portion of Mexico, that might not only have rivaled but have overshadowed the wreck of the old republic.

R. L. SCHUYLER.

COLUMBIA UNIVERSITY.

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Annexation, Preferential Trade and Reciprocity. By CEPHAS D. ALLIN and GEORGE M. JONES. Toronto, Musson Book Company, 1911.—xii, 389 pp.

This book exemplifies the tendency towards a more intelligent and more scientific discussion of the relations between the United States and Canada. Impressed by the fact that discussions of the relations between the two countries have usually been marked by partisan feeling, that facts have been suppressed, misrepresented or distorted for political purposes, and that biographers and historians have been too often induced to base their conclusions on statements thus erroneously made, the authors have attempted to deal with one phase of the relations between the two countries in a spirit of thorough and impartial investigation. This phase is the movement towards annexation to the United States which took place in Canada about the middle of the last century. They have endeavored to discover the origin of the political and economic discontent of 1849, to trace the development of the agitation, to show the extent of its ramifications and its effect upon political parties, and to explain the reasons for the failure of the annexationist movement. Beginning with the revolt of 1837 and the grant of responsible government to Canada, they trace the history of the succeeding ten years, culminating in the period of unrest in which annexation to the United States came to be so loudly and generally advocated as a remedy for existing ills. The study of the facts presented, while tending, in the authors' opinion, to remove any preconception as to the "superior quality" of Canadian fealty, furnishes convincing testimony to the "self-sacrificing loyalty" of the great body of the Canadian people under trying circumstances and to their firm attachment to the mother country. The circumstance is recognized, too, that at the time of the movement in question certain conditions in the United States operated against its success. There existed in Canada a deep-seated opposition to the slave system, while in the United States the preoccupation of the people with this question and the division of sentiment upon it prevented the growth of a general demand for the acquisition of territory to the north. The principle of non-intervention, then strongly maintained in the United States for the purpose of warding off outside interference in "domestic questions," exerted a restraining influence upon many who might otherwise have found it difficult to resist the temptation to take advantage of an apparent opportunity for the enlargement of national boundaries.

The authors limit themselves to the period which has been indicated;

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but it would be difficult to conceive of the existence in Canada today of conditions which would give rise to an annexation movement of such proportions as that which is described in the volume under review. Nothing could be more unfounded than the assumption often made in the United States, without knowledge of the facts, that there exists in Canada a widespread annexationist sentiment.

J. B. M.

Essai sur les Mejoras, ou avantages legitimaires dans le droit espagnol, ancien et moderne. By GEORGES DE LACOSTE. Paris, Arthur Rousseau, 1911.—xi, 505 pp.

Under the above title, utterly meaningless to the average American or English lawyer and impossible of translation, appears an admirably complete and scientific study of one of the most curious and interesting doctrines of the Spanish law.

In civil-law countries the law provides for what is known as a "reserve," being a designated proportion of every man's property over which, if he has descendants, he has no right of testamentary disposition. The Civil Code of France, for example, provides that gifts *inter vivos* or by will shall not exceed one-half of the testator's property, if he leaves at the time of his death one legitimate child; nor one-third, if he is survived by two children; nor one-quarter, if he leaves surviving three or more children. With this brief explanation we can understand M. de Lacoste's definition of the *mejora*, which is the subject of his work. As it exists in the Spanish Code to-day, it is, he says, "the portion of the reserve which the father of a family may, according to his desire, devise or bequeath in whole or in part to one or more of his children or descendants." The proportion of the reserve, and consequently the size of the *mejora* also, has changed in the course of its development; under the Civil Code of Spain it is one-third of the two-thirds which constitute the "reserve."

The advantage of this doctrine, in countries where the system of forced succession is in vogue and complete freedom of testamentary disposition is unknown, must be obvious. As our author puts it:

> It allows the father of a family, without the risk of cutting off his natural heirs, to reward substantially the affection, devotion or good conduct of a particular child. It will permit him to attenuate to a certain extent the injustice of fortune, by readjusting in a measure the inequalities existing between his descendants. It will redound to the advantage of a child burdened with a large family or overcome by poverty where the other children are in more fortunate circumstances. It will come to the aid of the infirm or defective child, unable to take up the battle of life. . . .

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M. de Lacoste goes on to show that the *mejora* is a compromise between the entire freedom of testamentary disposition existing in England and in the United States and the absolute restrictions imposed by the reserve system in most civil-law countries.

The work is divided into three parts. The first traces the history of the *mejora*, from its origin in the customs of the Visigoths, as set forth in the early days of their King Chindaswind, through the middle ages and to the present day, with a wealth of erudition, a precision of method and a lucidity of statement which leave nothing to be desired. The second part is devoted to a study of the theory of the *mejora;* while the third part embodies the results of a comparative study, in which the fullest examination is made of cognate legislation in some of the republics of Latin America.

M. de Lacoste is one of the "pensionnaires" of the Fondation Thiers, who are selected by a committee of distinguished publicists from among the most erudite and brilliant younger men of France. The work under review is a valuable contribution to the history of the civil law.

PAUL FULLER, JR.

NEW YORK CITY.

Totemism and Exogamy. By J. G. FRAZER. London and New York, The Macmillan Company, 1910.—Four volumes: xvi, 579; vii, 640; vii, 583; 397 pp.

This huge work aims at, and all but achieves, completeness in a field where the vast accumulation of material renders orientation almost impossible for any but the extreme specialist. The bulk of the work, and by all means the most important part, is a complete survey, arranged geographically, of the evidence for totemism, with its attendant problem of exogamy. This takes up 1700 pages of description and citation, accompanied in every case with a bibliographical footnote, often critical, always detailed and exact. Preceding this is a reprint of Mr. Frazer's earlier works on totemism: his book of 1887, elaborated from his article in the ninth edition of the *Encyclopædia Britannica* (which now, alas! has gone over to Lang), and his studies of 1899 and 1905, first published in the *Fortnightly*. The fourth volume contains a "Summary and Conclusion," some 200 pages of notes and corrections and eight essential maps to illustrate the text.

The plan is unfortunate. The earlier study is hopelessly out of date, and the ninety pages of notes by which Dr. Frazer seeks to modernize it are separated from it by some 1900 pages. The articles from the

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Fortnightly are more in line with what follows, as they show how dominant a part Australia has played in forming Mr. Frazer's theory. It has been suggested that they might have been merged into the summary at the close; but we are grateful that they have been reprinted as they stood, not for what Mr. Hartland (*Man*, XI, 6) regards as their evidence of the author's "open-mindedness and candor," but for their revelation of his conservatism and dogmatic temperament. A basic element in the whole structure here erected is the evidence from Australia, and particularly that concerning the Aruntas of Central Australia. Spencer and Gillen's famous book appeared in 1899, and Frazer's papers on the "Origin of Totemism" followed in April and May. He at once accepted their description of what he then called "humanity in the chrysalis stage," and has held to that position in spite of the doubts of others, for the society of the Arunta as given by Spencer and Gillen fitted admirably in with his general theories about primitive man, magically inclined and non-religious. Now Spencer and Gillen's monopoly of the Aruntas was broken in 1907, when a German missionary, C. Strehlow, published through the Museum at Frankfurt-am-Main his *Mythen, Sagen und Märchen des Aranda-Stammes im Zentral-Australien*. This material in part confirms, in part runs counter to the evidence of the English explorers. Above all, it indicates the existence of mythological and religious ideas, partly due no doubt to the missionaries themselves, but sufficiently consistent to show that, instead of being simple-minded semi-brutes, the Aruntas are both subtle and infinitely complex; and their theories concerning conception and birth, upon which so much in Frazer's theory depends, may be any kind of a play of their devious intellects. Frazer was sufficiently disturbed by the news of Strehlow's work to write to Professor Spencer about it, but was too busy to read the work itself. Spencer replied that Strehlow was an ignorant missionary, or words to that effect, and that he merely recorded native reflection of his own theology. Frazer gives the gist of this letter in a footnote (I, 186), remarking that the case is not worth going into further. It may not be; but if not, then most of what is in these volumes is also not worth reading; for few missionaries have given myths in the savage tongue with such Teutonic detail and patience as Strehlow. Just where we are with reference to the Aruntas no one knows; but to rest the major portion of a great work on a foundation so insecure, and then to refuse to look at the evidence against it, is, humanly speaking, a temptation of Providence.

By all means the best thing in this work is its collection of evidence. From the days of Tylor and Spencer, English anthropology has been

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too much given to tearing things apart from their context and using them where they do not belong. Here Dr. Frazer not only gives us whole extracts instead of isolated sentences, but he masses together all the evidence for any one place or tribe. Yet when we test it on another vital point, we again find ourselves deceived. Naturally this material is, all of it, surcharged with *taboo*. This involves a consideration of the rôle of the sacred; and, whatever un- or pre-animistic forces are at work in primitive magico-religious society, Frazer has consistently refused to accept the theories of magic which depend upon *mana*, a mysterious something in things. It is therefore of interest to see how he treats perhaps the best statement we have of the *mana* scheme, W. J. Jones's "Algonkin Manitou" (1905). Frazer gives at length all the old descriptions of manitoo (as he calls it), which make it out to be a "guardian spirit." Then at the close he says: "The Sauks, Foxes and Kickapoos also obtained guardian spirits or personal manitoos by means of fasts and visions" (III, 393). For this statement he refers to Jones's article. Either he has not read the article or has mislaid his notes; for Jones's whole psychological analysis emphasizes the impersonal and elusive character of manitou; it becomes one with *mana*, *arungquiltha* and the like, only having received a further development. To be sure, Frazer is not dealing here directly with the *mana* theory, but his blunder does involve the hypothesis. By the time we arrive at the complexity of later social formations, with their mirror in myth and theology, we have nothing but distorted evidence on the essential nature of such affairs as totemism.

I have no space for further illustration of method nor for a summary of conclusions. Conclusions depend upon method, with its presuppositions, tendencies and valuation of evidence. The work is truly monumental; its material invaluable. But the origins of these customs of barbarism and the explanation of their rôle are not established by it. The field is still open.

J. T. S.

Influences of Geographic Environment, on the Basis of Ratzel's System of Anthropo-Geography. By ELLEN CHURCHILL SEMPLE. New York, Henry Holt and Company, 1911.—680 pp.

Of the preëminently influential writers who have emphasized the relation of the physical environment to man—Montesquieu, A. von Humboldt, Ritter, Kohl, Peschel and Buckle—only the author of the *History of Civilization in England* has written in English. There is, indeed, a translation of Montesquieu's *Esprit des Lois*, but, in general, the litera-

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ture in English of geographic influences on man has hitherto been fragmentary and unsatisfactory. Moreover, it has been scattered through magazines and other publications over a period of several decades and has been difficult of access. Were Miss Semple's volume, therefore, as was originally planned, merely a simplified paraphrase of the principles embodied in Friederich Ratzel's *Anthropo-Geographie*, it would fill a gap in English and American scientific literature that has long existed. But the service rendered has been far greater than that of a simple presentation of Ratzel's principles. Realizing, as she tells us in a very modestly worded preface, that many of Ratzel's brilliant generalizations rest on insufficient evidence, Miss Semple resolved "to go over the whole field from the beginning, making research for the data as from the foundation, thus checking principles by facts." In so doing she found it necessary, not only to arrange the material far more systematically than Ratzel had done, but in many respects to alter emphasis, to eliminate certain points altogether and to fill gaps with original contributions.

The method of research has been "to compare typical peoples of all races and all stages of cultural development living under similar geographic conditions." "If these peoples of different ethnic stocks but similar environments manifest similar or related social, economic or historical development," the author considers it "reasonable to infer that such similarities were due to environment and not to race." Thus it is held that "by extensive comparison the race factor, in these problems of two unknown quantities, was eliminated for certain large classes of social and historical phenomena." In view of the perhaps inevitable over-emphasis of the influence of physical environment in a volume of this character, it is not surprising that the author should fail to perceive the serious theoretical and practical fallacy in the sentences quoted. Unless undue extension is given the terms race and geographic environment, Miss Semple, in these sentences, has taken no account of a very important third factor, namely, knowledge. As a matter of fact social, economic and historical similarities—that is, institutional similarities—among peoples have arisen very largely through culture contacts and the spread of institutions by imitation. A striking example is the recent assimilation of European standards by Japan. Miss Semple herself would doubtless readily admit the validity of this principle. She has taken pains to state that she uses the terms geographic factors and influences in preference to geographic determinant, and she "speaks with extreme caution of geographic control." Nevertheless the unwary reader may often fail to appreciate the importance of non-geographic factors not mentioned in the text. Doubtless this result is inevitable in any work given to the analysis of a single influence in history.

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The book is not wholly free from inconsistency. For example, on page 2, the time-worn dictum is accepted that "natural environment is for all intents and purposes immutable in comparison with the other factor in the problem—shifting, plastic, progressive, retrogressive man." On page 17, however, the statement appears that "the gradual dessication of Western Asia, which took a fresh start about 2000 years ago, caused that great exodus and displacement of peoples known as the *Völkerwanderung* and thus contributed to the downfall of Rome." Doubtless to the modern historian, who dates the beginnings of his subject from the advent of that ape-like progenitor of man who appeared on this planet possibly a million years ago, the overthrow of Rome becomes an incident; and the few centuries of unrest alleged to have been produced by desiccation in Asia seem so insignificant a period of time, and the unrest itself so trivial, as to place these events in the category of static phenomena and to preclude the use of the term dynamic in describing the geographic cause. But Miss Semple would be the last person to count herself among those who think in tens of centuries. For her this desiccation was "one factor in the Saxon conquest of Britain and the final peopling of Central Europe"; and it gave the original impulse to "the impact of the Turkish hordes hurling themselves against the defenses of Constantinople in 1453" which "was felt only forty years afterward by the far-off shores of savage America." "Earlier still it"—the influence of this desiccation—"reached England as the revival of learning, and gave Portugal a shock which started its navigators towards the Cape of Good Hope in their search for a sea route to India." It is somewhat peculiar that, in thus forgetting for the moment the ancient dictum of the static condition of geographic environment, the author should have failed, apparently, to emphasize the tremendous effect that the successive advances of the ice sheet and the topographical changes of continental areas must have had on the migrations of primitive man. But as was said before, Miss Semple, does not think in tens of centuries.

For this very reason, perhaps, her work becomes the more valuable, for it abounds in exact facts and concrete instances of undeniable effects of geographic environment. These effects Miss Semple divides into four classes: (1) direct, "or similar to those exerted on plants and animals by their habitat"; (2) psychical, moulding mind and character, directly or indirectly, through the medium of economic and social life; (3) those that condition "the economic and social development of a people by the abundance, paucity or general character of the natural resources"; and (4) those that influence the movements and ultimate

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distribution of mankind. In a general way this classification is followed in the treatment of the topics: migration, area, boundaries, coast peoples, oceans, rivers, peninsulas, island peoples, plains, steppes and deserts, mountain barriers and climatic influences. Under these headings is gathered a veritable mine of facts, there being on an average no less than eighty-five explicit citations of sources for each of the seventeen chapters. As a source-book alone, therefore, the work is invaluable. A number of illustrative maps admirably reinforce principles stated in the text. Moreover, the greater part of the theoretical discussion, as far as it goes, is illuminating.

The reader who expects to find in the volume a succinct and coördinated statement of principles and a well-constructed theory in which there is adequate presentation of the importance of the various geographic influences on man in relation to each other, together with their importance as a whole in relation to other influences, will be disappointed. On the other hand, the searcher for specific illustrations of particular classes of influence or for critical discussion of hypotheses and principles relating to these particular classes will find both in abundance. The book, however, is far from being a mere catalogue of facts roughly classified; it is rather a remarkably well written and, in the main, successful attempt to present all available evidence within its field. Certainly it is a work which no student in any branch of political science can afford to overlook.

A. A. TENNEY.

COLUMBIA UNIVERSITY.

The Changing Chinese: The Conflict of Oriental and Western Cultures in China. By EDWARD ALSWORTH ROSS. New York, The Century Company, 1911.—xvi, 356 pp.

To the student of human society, no matter from what particular angle he regards it, modern China has a fascinating interest. The struggle going on there involves more than a question of governmental control or of dynastic security. Titanic social forces, reaching deep down into the lives of the people, are battling for supremacy. The economic future, the future of the family, of education, of religion, of morals as well as of the state, tremble in the balance. Indeed we are permitted to observe in China nothing less significant than a whole civilization, older by far than any other in existence, seething in the melting pot. The book under review, with its suggestive sub-title, is thus peculiarly opportune. It is also of just the right character. It is not a pleasing chronicle of a summer's journey. There is in it little

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description of natural scenery, born of an enthusiastic appreciation of artistic values—not because Professor Ross lacks such appreciation, but because he found no place in his plan for such embellishment. He was interested in China only in so far as it helps to explain the Chinese. His book gives us a picture of what he has seen—a picture in which light and shadow have been so manipulated as to throw into bold relief the important, fundamental forces of Chinese civilization. It is a picture that impresses one with its apparently photographic accuracy.

There are ten chapters in the book, each of which deals with some such topic as the race fiber of the Chinese, the race mind, the struggle for existence in China, China's industrial future, the opium evil, foot-binding of the women, Christianity and education. The picture as a whole is one of a people that stands as a grim exemplification of the Malthusian law. The structure and ethics of the family and of the social group have been such as to put heavy emphasis upon early marriage and numerous progeny. Consequently population has increased to the point where the "positive checks" have become gruesomely operative. The murder of female infants, plagues and famine, an almost incredible infant-mortality rate—all these testify in China to the essential soundness of Malthus's contention. The struggle for existence among the great body of people has, in consequence, become so terrible and exacting that in some places donkeys cannot stand the competition of men as beasts of burden! Overstrain and premature deaths are the inevitable results. Unhygienic living, impure water and lack of sanitation have through selection made the Chinese peculiarly resistant to noxious microbes; but the bitterness of the economic struggle has deadened rather than stimulated individual initiative, thus precluding the possibility of invention and of progress, has resulted in the utter denuding of the forests, with all of the unfortunate consequences of deforestation, and has given rise to a wasteful and deadening system of nepotism and sinecurism in every department of public and private business administration. The improvement that may be expected in sanitation *etc.* as time goes on will probably lower the death rate; but, unless there is a break with the past and with those social ideals that stimulate a high birth rate, the outcome will be simply further and extreme overcrowding with a great "outthrust" of population, and then Chinese emigration is likely to become a world question.

The "yellow peril" Professor Ross sees as an economic peril. He flouts the notion of a Chinese military conquest, because of the complete extinction of the military spirit in China and the great improbability of its revival. A general policy of exclusion may successfully

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stem the tide of Chinese immigration; but against the competition of a manufacturing China, adopting the industrial methods of the West yet employing its own incredibly cheap but diligent and clever labor, no western nation will be able to hold its own in the neutral markets of the world. But before China attains this degree of industrial power it will have to supply its own enormous market; it will have to train its laborers to factory methods; it will have to reorganize its system of business ethics, eliminating the petty and wasteful system of graft and nepotism that now impedes enterprise; and it will have to overcome its "lust for immediate profit" for the sake of larger returns in the future. "The fact is," says Professor Ross,

> the faulty past lies too heavily on the mind and the character of contemporary Chinese. . . . Perhaps the moral atmosphere will not clear till there has come a marked let-up in the struggle for existence. . . . People do not judge one another very strictly when each acts with the abyss ever before his eyes [page 137].

All this, the author concludes, "will long delay the harnessing of the cheap labor power of China to the machine. Not we, nor our children, but our grandchildren will need to lie awake nights" (page 138).

Professor Ross gives also interesting outlines of the history and present status of the heroic fight against opium and of the campaign against the cruel and inhuman "footbinding" of the women. Professor Ross interprets very sympathetically the work of the Christian missions, especially that of the modern mission schools, colleges and individual workers who are emphasizing the realization of the kingdom of heaven here on earth and Christian charity and fellowship in our present relations between man and man rather than the ultimate salvation or damnation of the human soul. In the new education which is spreading like wild-fire through China, Professor Ross finds some of the difficulties and dangers that confront the children of immigrants in this country. Cutting loose from the traditions of the past and getting only the material and not the moral ideals of the new life involve a weakening of moral responsibility that is fraught with ominous consequences. Whether the transformation in China will thus prove a curse or a blessing time and the quality of the new leadership alone can tell.

To one who has read Professor Ross's book the daily news from China will have a new interest and significance. To the student it represents a scientific study and analysis of the first importance. The interest of the book is increased by many photographic illustrations.

EUGENE E. AGGER.

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RECORD OF POLITICAL EVENTS

[From November 7, 1911 to May 1, 1912]

I. INTERNATIONAL RELATIONS

THE TRIPOLITAN WAR.—The belief quite generally reflected in the European press, in November, that the Ottoman government, after a show of force, would speedily recognize the Italian occupation of Tripoli, proved ill-founded. By the middle of December the Italian "expeditionary" army, increased to some 70,000 men and placed under the supreme command of General Caneva, had occupied all the important coast towns of Tripoli and Cyrenaica and a few miles of the hinterland, but thenceforth encountered grave difficulties in the desultory guerilla warfare which the native Arabs waged under Turkish officers. It was believed that the Arabs secured supplies and reinforcements from their kinsmen and co-religionists in Tunis and Egypt; and the British and French governments were called upon to enforce a strict neutrality along their frontiers. Several native uprisings in occupied towns were sternly suppressed, and a Turkish attack on the Italian defences around Derna on February 13 was repulsed. "Brutal" and "atrocious" treatment of non-combatants on the part of the Italians was repeatedly alleged by anti-Italian correspondents and as repeatedly denied by officials. Meanwhile the **area of hostilities** was extended. On January 7 the first important naval engagement of the war occurred in the Red Sea and resulted in the sinking of seven Turkish gunboats by a squadron of Italian cruisers. On February 5 the Italian fleet bombarded Hodeida on the Red Sea. On February 24 Italian warships bombarded Beirut, the principal port of Syria, sinking two Turkish vessels in the harbor and damaging the customs house and other buildings near the sea. The bombardment of the Dardanelles in April called forth an energetic Turkish protest to the powers.—In January, Italian warships, in an aggressive search for vessels suspected of carrying belligerents or contraband, held up and took to Cagliari in Sardinia two French steamers, the "Carthage" and the "Manouba," bound from Marseilles to Tunis, the former carrying an aeroplane and the latter twenty-nine Turks, ostensibly members of the Red Crescent Society. The French government protested and threatened to withdraw its ambassador from Rome if the Turks were not at once set at liberty. Italy complied with the demand, and the matter was referred to the Hague Tribunal.—It was officially stated at Rome on March 2 that the Italian losses in the war to date were 536 killed and 324 missing.

MOROCCO.—The **Franco-German** treaties (see last RECORD, p. 736) were signed on November 4 in the form of a supplement to the Franco-German agreement of 1909. By the first treaty, dealing directly with

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Morocco, (1) Germany acknowledges the French right to a protectorate; (2) France promises equality in tariff rates and no differential imposition of mining dues; (3) railways are to be managed by Morocco under French guidance with due regard to interests of all creditors; (4) a provisional system of arbitration is to be conducted under French supervision pending the establishment of regular courts; (5) Germany agrees ultimately to suppress consular jurisdiction; (6) France guarantees coastal fishing rights and promises to recommend the opening of closed ports; and (7) Germany undertakes to aid France in securing the approval of the other signatories to the Algeciras Convention. By the second treaty, dealing with colonial "compensations," (1) France cedes to Germany two triangles of territory in the Congo, having their bases on the Cameroons and their apexes, one on the Congo River and the other on the Ubangi, and also a strip of territory north of Libreville; and (2) Germany cedes to France a part of the "Duck's Beak" near Lake Chad. A special provision of the treaties makes compulsory the submission to arbitration of any difference of opinion regarding their interpretation.—"Conversations" were at once opened between **France** and **Spain**, in order to define their respective positions in Morocco. The latter, although troubled by continuous fighting with the Riffian tribes, was inclined to insist on a close adherence to the agreements of 1904 and 1905, which had placed a long stretch of the Atlantic as well as of the Mediterranean coast within the Spanish sphere of influence; the former, on the other hand, contended that for the colonial compensations it had made in order to secure German withdrawal Spain in turn should make concessions to France. It was reported in April that the British government was using its good offices to bring the Franco-Spanish negotiations to a successful conclusion.—Meanwhile, on March 30, the sultan of Morocco signed a treaty at Fez establishing a **French protectorate** along the same lines as that created by the treaty of the Bardo with the bey of Tunis. The sultan undertakes "for the future not to contract directly or indirectly any public or private loan, or to grant under any form whatever any concession, without the authorization of the French government." The French government is empowered to effect the military occupation of any part of Moroccan territory where it considers such occupation to be necessary for the maintenance of order and the security of commercial transactions, the only condition of such occupation being that France shall have previously informed the Maghzen.—M. Jonnart, formerly governor-general of Algeria, was named as French resident-general in Morocco. The total cost of the French military operations in Morocco from 1907 to date was reported in March to be $29,000,000.—A serious mutiny of Shereefian troops against their French officers occurred at Fez on April 17. After three days' pillage and rioting, French reinforcements under General Moinier restored order.

GENERAL EUROPEAN RELATIONS.—As soon as France and Germany had come to a definite understanding concerning the Moroccan question and the "compensations" in the Congo, the veil was lifted from

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the discussions that had been going on for months between **Great Britain** and **Germany**. In his speech before the Commons, on November 27, Sir Edward Grey, the British foreign secretary, made it quite evident that in supporting France Great Britain had been several times, during July and August, very near to war with Germany. Ill-feeling was only too evident in both countries throughout the winter months. This the visit of Lord Haldane to Berlin in March did little to allay. On March 18, Winston Churchill, introducing the naval estimates in Parliament, offered to retard or temporarily suspend naval construction if Germany would do likewise, but declared that his country would insist upon double strength on the seas. In Germany this speech was ill received and the naval appropriations were increased.—The **Triple Alliance** displayed renewed vigor in the hearty welcome accorded in March to the German emperor in Austria and in Italy. The latter, which for some time had been charged with lukewarmness toward her allies, had apparently been estranged from the western powers by the "atrocities" campaign in a part of the English press, the untimely outburst of French irritation over the Manouba affair, and the Egyptian and Tunisian boundaries disputes.—Somewhat in the nature of a counter demonstration were the **Anglo-French** fêtes on the Riviera in April and the unveiling of monuments to the British monarchs.—Rioting in **Crete** was followed in February by the murder of a number of Moslems, and feeling rose to a dangerous pitch. The consuls of the protecting powers served notice on the Cretan government that, if measures were taken such as the sending of deputies to Athens, the abolition of the Capitulations or the dismissal of Mohammedan employees, and if crimes against Mohammedans continued, the powers would reoccupy the island. In March the extremists gained the upper hand (see *infra*, p. 381) and elected delegates to the Greek Assembly. Foreign warships, however, prevented the Cretan representatives from reaching Athens.—A **Russo-Bulgarian** treaty concerning the payment to Russia of the cost of her occupation of Eastern Rumelia was signed in February. The amount was placed at 10,680,250 roubles, paper, to be paid, beginning with the present year, in semi-annual instalments of 250,000 roubles, without interest, until the whole debt is extinguished.

ASIATIC RELATIONS.—The **Russian** government persevered in the policy of making its control effective within the sphere of influence accorded to it in **Persia** by treaty with Great Britain; and the latter country, at least tacitly, acquiesced. A Russian ultimatum on November 29 demanded the immediate dismissal of Mr. W. Morgan Shuster, the American treasurer-general, and an assurance that in future no foreigner would be appointed to office without the consent of Russia and Great Britain. The Persian Mejliss having rejected the ultimatum, Russian troops speedily advanced into the country and won bloody battles at Tabriz, Resht and Enzeli. On December 20 the Mejliss agreed to the Russian ultimatum and dismissed Mr. Shuster. It was stated in March that, although Russian garrisons

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would be maintained in Tabriz and Resht, a sensible diminution of the troops in Tabriz would soon take place and probably all the troops would be withdrawn from Kazvin.—The revolution and civil war in **China** (see *infra*, p. 382) seemed for a time to forebode serious international complications. The Russian government was repeatedly accused of stirring up opposition to the new régime in Mongolia in order to separate that province from the empire; and the disorder in the coast towns led to the frequent landing of marines from foreign warships. But as the republican government consolidated its power, the chief problem became one of arranging a large joint loan. Negotiations on this subject were not complete on May 1.

AMERICAN RELATIONS.—In the middle of November General Bernardo Reyes and sixteen other persons were indicted in Texas for having engaged in fitting out an expedition against the government of **Mexico**; in January thirteen of them pleaded guilty. In view of the evasion of the neutrality laws the War Department moved several regiments of infantry to the frontier in February and March; and, empowered by a resolution which passed through Congress unanimously, President Taft issued a proclamation forbidding shipments of arms into Mexico under heavy penalties. Meanwhile the American ambassador warned his countrymen to leave the danger zone. On March 29, with the consent of the Madero government, one thousand rifles and a million rounds of ammunition were shipped for the eventual use of American residents in Mexico City. Militia officers were summoned to Washington for a conference. On April 14, after the shooting of an American prisoner by the rebel leader Orozco, the United States warned both Orozco and Madero peremptorily that the murder of American belligerents would not be tolerated. Madero's reply, received on the 17th, declared that "the Mexican government finds itself in the painful necessity of not recognizing the right of your government to make the admonition which the note contains." Shortly afterwards Señor Calero, who drafted this reply, was sent to Washington as ambassador.—The **arbitration treaties** with Great Britain and France (see last RECORD, p. 739) were ratified by the United States Senate in an amended form on March 7. Senator Lodge's resolution, providing that nothing in the treaties should be construed as impairing the powers of the Senate, was not adopted. The amendments deprive the joint high commission of the function of determining whether a controversy is justiciable and withdraw from arbitration all questions regarding the admission of aliens to the United States, their admission to educational institutions of the states, the alleged indebtedness of states and the Monroe doctrine. The vote on ratification was 76 to 3.—In a message to Congress on December 7 President Taft expressed the hope that negotiations with **Russia** would secure a proper recognition of passports held by Jewish American citizens traveling in Russia. On December 13, however, the Sulzer resolution calling for the abrogation of the treaty of 1832 with Russia passed the House of Representatives with only one dissenting vote. When, a few days later, the president informed the

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Senate that he had denounced the treaty, that body unanimously ratified his action, the House following suit the next day.—On February 23 Secretary of State Knox left Key West on a visit to the **Latin American republics** bordering on the Caribbean. On the previous day General Ospina, Colombian minister at Washington, who had made public a letter to the State Department saying that a visit by the secretary to his country would be "inopportune," was recalled by his government; but no invitation was extended. The countries visited were: Panama, Costa Rica, Nicaragua, Honduras, San Salvador, Guatemala, Venezuela, Santo Domingo, Hayti, Cuba, Porto Rico and St. Thomas. The secretary's reception was everywhere cordial, though in Nicaragua an attempt seems to have been made to dynamite the train on which he was traveling. His public utterances laid emphasis on the disinterested intentions of the United States, the full measure and extent of whose policy is "to assist in the maintenance of republican institutions." In commenting on his tour Mr. Knox said that two hostile forces opposed the friendly efforts of the United States: misrepresentation of their purpose and the self-interested influence of certain coteries in the United States which profit by political abuses in the republics.—In view of the interference of the military veterans in the political affairs of **Cuba**, Secretary Knox cabled the United States minister at Havana on January 16 that the threatened situation might compel his government, much against its desires, "to consider what measures it must take in pursuance of the obligations of its relations to Cuba."—In conformity with the terms of the treaty still pending before the United States Senate, **Honduras** negotiated a loan of $6,000,000 with a New Orleans syndicate in January; in April the State Department gave its approval.—Following the negotiation of a loan of $1,500,000 (which will be increased to $15,000,000 if the United States Senate ratifies the pending treaty) the American surveyor of customs at Manila was appointed general collector of customs in **Nicaragua**. In January the men interested in this loan incorporated the National Bank of Nicaragua with a capital of $5,000,000 and large fiscal powers in the republic.—On January 15 the cruiser "Maryland" was ordered to the coast of **Ecuador** to protect American interests.—In April, referring to Senator Lodge's resolution of inquiry as to a reported purchase of land at Magdalena Bay in Mexico by the Japanese government or a Japanese company, the prime minister of **Japan** and President Madero denied that any such purchase had been made. The Oriental Steamship Company, however, had acquired from Mexico fishing rights along the west coast and had transferred these to the Oriental Whaling Company.

II. THE UNITED STATES

THE ADMINISTRATION.—In his annual report the **secretary of war** recommended the concentration of the scattered units of the army so as to secure both economy and efficiency in its use as an offensive and a defensive weapon; the maintenance of a large portion of the mobile army on a

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war footing; the establishment of a reserve supply of ammunition for the field artillery; and changes in the conditions of enlistment so as to create a reserve force of trained men in civil life. These recommendations, all endorsed by the chief of staff, were based on lessons taught by the spring mobilization on the Mexican frontier. On February 15 Adjutant-General Ainsworth, after giving his support to a Democratic army bill which was distasteful to the secretary of war, was removed from his office on charges of insubordination. Next day, upon his own application, he was placed upon the retired list, thus escaping court-martial.—The **postmaster-general**, in his annual report, urged the establishment of a one-cent rate of postage for letters and of a parcels-post system. He also recommended the acquisition by the government of all telegraph lines and their operation through the post-office. In transmitting the report to Congress, President Taft explained that he did not endorse the plan. On February 22, the president sent to Congress with his approval the report of the commission on second-class matter, recommending that postage on newspapers and magazines be increased from one cent to two cents a pound. Mr. Hitchcock originally suggested a rate of four cents.—On March 15 Chief Chemist Harvey W. Wiley of the **Department of Agriculture** resigned, indicating that he was prompted to do so by conditions within the department (see last RECORD, p. 741). Alleged irregularities in the Florida Everglades, which resulted in the dismissal of the chief drainage engineer and his assistant, were brought to the attention of the grand jury in the District of Columbia and resulted on April 1 in the indictment of these men and two others on the charge of approving false vouchers. The former maintained that the charges of technical violation of the law were brought against them because of their opposition to certain land promoters.—The **Railroad Securities Commission**, appointed by the president in 1910, reported on December 11 that it would be practically impossible to place issues of railroad securities under federal control. The commission recommended full publicity in regard to such issues under statutory regulations enforceable by the Interstate Commerce Commission, which should have the power to make physical valuations.—Speaking at Kansas City in November, Secretary Stimson said that the **Panama canal** must not be throttled by the railroads. He advocated government aid for American ships using the canal, holding the view that the Hay-Pauncefoote treaty, which forbids discrimination, would not be violated by an arrangement for the return of tolls paid by American ships engaged in the coastwise trade.—Among the **appointments** made by the president were: John W. Garret to be minister to Argentina; Myron T. Herrick to be ambassador to France; and Mahlon Pitney to be justice of the Supreme Court, in succession to Justice Harlan, deceased.

CONGRESS.—The first regular session of the sixty-second Congress began on December 4. Instead of grouping his recommendations in a single message, President Taft sent to Congress a series of **special messages**.

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The most important were: December 5, recommending amendments to to the Sherman Act, federal incorporation for companies engaged in interstate commerce, and the creation of a commission to which corporations "might well submit their proposed plans for future business"; December 20, transmitting the report of the tariff board on the wool schedule and urging revision downwards and a radical change in the method of assessing duties on raw wool; December 21, approving the report of the National Monetary Commission, asking for two battleships a year till the Panama canal is completed, and urging legislation to reduce expense and delay in the courts, to establish rural parcels-post and to extend the merit system; February 2, advocating a federal commission to examine into industrial relations and an international commission to investigate the high cost of living; January 17 and April 4, recommending administrative changes which would effect a saving of $11,000,000 and asking for an appropriation to continue the work of the Commission on Economy and Efficiency; February 29, transmitting the report of the Employers' Liability Commission together with a bill which would carry its views into effect; and March 26, transmitting the report of the Tariff Board on the cotton schedule and recommending a considerable reduction in the duties.—At the close of this record few **laws** of importance had been enacted. An act of March 23 created a local citizenship in the Philippines (see *infra*, p. 367). An act of April 9 established in the Department of Commerce and Labor a Children's Bureau, for the purpose of investigating "all matters pertaining to the welfare of children and child life among all classes of our people." After being inexcusably shelved in the special session and successfully fought for months in the regular session, the Esch Match Bill, placing a tax of two cents a hundred on matches made of poisonous white phosphorus, became law on April 9. (For the action of Congress on the abrogation of the treaty of 1832 with Russia, see *supra*, pp. 354, 355.)—As in the special session, the Democratic members of the Committee on Ways and Means undertook the revision of the **tariff** by separate schedules. On January 29, after being approved by the Democratic caucus, a bill providing for reductions in the duties on steel and iron passed the House by a vote of 210 to 109. On April 5 the Senate Committee on Finance reported the bill adversely. On February 21, after two days' consideration, a bill revising the chemical schedule in such a way as to produce a higher revenue was adopted by the House. On March 15 sugar was placed on the free list by a vote of 198 to 103, twenty-four Republicans joining the Democratic majority. Four days later eighty Republicans joined the Democrats in carrying (252 to 40) an Excise Tax Bill intended to make good the $52,000,000 loss which the abolition of the sugar duties would entail. The bill would levy a tax of one per cent on the net income of individuals and corporations from business sources. On March 21 Chairman Underwood, who criticized the findings of the Tariff Board as incomplete and erroneous, introduced a bill which fixed the duty on raw wool at

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20 per cent and the duty on manufactures of wool at 30 to 45 per cent. The bill passed the House on April 1 by 189 to 92, only one Democrat opposing it, while twenty Republicans voted for it.—On December 12 the Sherwood Service Pension Bill, which would give a dollar a day to all who served a year or more in the Mexican or in the Civil War, was adopted in the House by a vote of 229 to 92. On March 29 the Senate passed a substitute measure of a less extravagant character.—The Army appropriation Bill, as adopted by the House on February 16, increased the term of enlistment from three to five years and reduced the number of cavalry regiments from fifteen to ten. In April the Senate struck out the provision regarding the cavalry.—In April the Senate passed a bill requiring that all male alien immigrants be able to write as well as read and authorizing the deportation of aliens who conspire in the United States for the overthrow of a friendly foreign government.—The House passed in April a bill which requires publicity for contributions and expenditures made in the interests of candidates for presidential nomination.—On May 1 the Legislative Appropriation Bill was reported to the House without any provision for the maintenance of the **Commerce Court** and with a recommendation for the discontinuance of the court after July 1, its jurisdiction to be transferred to the federal district courts. On May 4, in response to a request for information, President Taft sent a message to the House relative to certain charges which had been made against the probity of Judge Archbald of the Commerce Court. He sent, for the use of the Committee on the Judiciary, papers bearing upon the investigation made by the Department of Justice. The House immediately resolved to hold an inquiry.—On March 27, by a vote of 40 to 34, the Senate declared that the charges against Senator Stephenson (see last RECORD, p. 744) had not been sustained and that he was entitled to his seat. On March 28 the select committee appointed to examine a second time into the charges against Senator Lorimer (see last RECORD p. 744) adopted, by a vote of five to three, a resolution exonerating him.

THE FEDERAL JUDICIARY.—Among the more important decisions of the **Supreme Court** were the following. Cars used in moving intrastate traffic on a railroad which is a highway of interstate commerce are subject to the provisions of the federal Safety Appliance Act, and Congress had power to enact that law (Southern Railway Company *v.* United States, 222 U. S. 20). A city is not denied the equal protection of the laws by a statute imposing on it a liability for damage to property caused by a riotous mob (City of Chicago *v.* Sturges, 222 U. S. 313). Congress did not exceed its power to regulate the relations between the interstate carriers and their employees by enacting the Employers' Liability Act of 1908, restricting defences of contributory negligence and assumption of risk; and the laws of the several states, so far as they cover the same field, were superseded by the act (Southern Railway Company *v.* Reid, 222 U. S. 424; Moudon *v.* New York, New Haven and Hartford Railway Company, 32 S. C. R.

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169). Subjecting illuminating oils to an inspection to determine safety and value is a proper exercise of the police power of a state (Red C Oil Manufacturing Company *v.* Board of Agriculture of North Carolina, 222 U. S. 380). Fixing rates under substantially similar traffic conditions so as to allow a higher rate for a shorter route is within the power of the Interstate Commerce Commission (Interstate Commerce Commission *v.* Union Pacific Railway, 222 U. S. 541). Exempting from a license tax on the laundry business steam laundries and women in the laundry business where not more than two women are employed does not deny equal protection of the laws to a man operating a laundry (Quong Wing *v.* Kirkendall, 32 S. C. R. 192). Whether a state has ceased to be republican in form, within the guaranty of article 4, clause 4, of the Constitution, because of its adoption of the initiative and referendum, is a political question, solely for Congress to determine (Pacific States Telephone and Telegraph Company *v.* State of Oregon, 32 S. C. R. 224; Kiernan *v.* City of Portland, 32 S. C. R. 231). A state tax imposed upon the capital stock of a foreign railway company is invalid under the commerce and due-process clauses of the federal constitution (Atchison, Topeka and Santa Fé Railway *v.* O'Connor, 32 S. C. R. 216). The decision of the secretary of commerce and labor, affirming denial by an inspector of the admission of Chinese into the United States, is conclusive unless abuse of discretion is shown (Tang Tun *v.* Edsell, 32 S. C. R. 359). Leaving to the Interstate Commerce Commission the working out of details under statutes prescribing a uniform system of accounting for carriers under those statutes is not illegal as a delegation of legislative authority (Interstate Commerce Commission *v.* Gooderich Transit Company, 32 S. C. R. 436). Other cases appear under THE TRUST PROBLEM AND THE RAILROADS, *infra*, pp. 363, 364.—On February 19 Mahlon Pitney, chancellor of the state of New Jersey, was nominated by the president as associate justice of the Supreme Court in succession to the late John M. Harlan.—For the investigation of charges brought against Judge Archbald of the Commerce Court see *supra*, p. 358.

STATE AFFAIRS.—Proposed constitutional amendments providing for **woman suffrage** were defeated in the Maryland lower house on February 29, in the Massachusetts Senate on March 20, in the New Jersey Senate on March 19, and in the New York Senate in April; but proposals of this character were adopted by the Michigan legislature in March and by the Arizona lower house on April 8.—On April 5 the Maine legislature sustained **charges of corruption** and incompetence which had been preferred against County Attorney Richardson and exonerated Sheriff Emery of bribery charges; the vote in each case largely followed party lines. Charges of bribery in connection with the passage of a local-option bill by the Maryland legislature were brought against the state auditor-elect on March 28 and against a state legislator on April 30; bail for both men was fixed at $10,000. On March 7 the New Jersey Senate found Senator Fitzherbert guilty of attempted extortion, in having offered to withdraw two pending

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bills for a consideration of $5000. As the Democrats steadily supported the accused, the required two-thirds could not be mustered for his expulsion. On March 19 four members of the New Mexico lower house were suspended on the charge of having accepted bribes to vote for a certain senatorial candidate. In defence they asserted that the charges were made in order to discredit the candidate. On March 13 State Senator Andrews of Ohio was found guilty of having accepted a bribe of $200 in connection with the passage of an insurance bill.—On February 14 President Taft signed the proclamation admitting **Arizona** as the forty-eighth state. In April the legislature adopted for submission to the people a constitutional amendment providing for the recall of judges. Two Democratic senators were sent to Washington.—On April 11 a pension act granting civil-war veterans, their widows or children $30 a year was declared unconstitutional by the **Connecticut** supreme court.—On December 21 the **Illinois** supreme court sustained the statute providing for commission government. On February 24 the court held invalid an appropriation act which had not been printed in final form before its enactment; owing to the careless practices of the legislature many other laws will be invalidated. On March 27 the Senate adopted an amendment to the constitution permitting the simultaneous submission of three amendments.—On March 23 the **Maine** legislature rejected a proposed local-option amendment to the constitution.—On March 20 the direct election of United States Senators was defeated in the **Massachusetts** Senate.—On January 17 the **Mississippi** legislature chose the primary nominee, James K. Vardaman, to succeed Mr. Percy in the United States Senate; this action was taken after the state had brought suit against Mr. Vardaman for misuse of public funds during his term as governor. In March the legislature provided for a graduated tax on incomes in excess of $2500.—On January 6 President Taft signed the proclamation admitting **New Mexico** as the forty-seventh state. On March 27, after eight ballots, two Republicans were chosen as United States Senators.—In December complete returns showed that all seven constitutional amendments submitted to the people of **New York** in November were defeated. On February 21 Governor Dix nominated E. G. Riggs and H. P. Bissell as public service commissioners; both nominees being rejected by the Senate, the governor was forced to choose men more acceptable to the Democratic organization. Dr. Alvah H. Doty, health officer of the port of New York, refusing to resign after an investigation which disclosed evidences of loose business management, was removed by the governor. A Direct Primary Bill was passed by the legislature in February. On March 7 the court of appeals held invalid a provision of an earlier act to the effect that the name of a candidate might appear on the primary ballot only once.—The **Ohio** supreme court in January upheld an insurance law for industrial accidents and a fifty-four-hour bill for female labor. The Ohio constitutional convention determined to propose amendments providing for a three-fourths jury verdict in civil cases, one trial before a judge and jury and one review by

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a higher court, woman suffrage, and the initiative and referendum. On April 27 Clark county went wet by a majority of 3000.—On January 9 the supreme court of **Wisconsin** held constitutional the graduated income tax passed at the last session of the legislature.

MUNICIPAL AFFAIRS.—In March and April municipal **elections** were held in various parts of the country. The Socialists lost ground in Milwaukee, Wisconsin; the fusion candidate was elected over Emil Seidel, the former Socialist mayor, by 13,000; the fusionists won 26 seats in the council, the Socialists 11. A heavy vote was cast. The Socialists were also beaten in Butte, Montana; Girard, Kansas; Flint, Michigan; and Muscadine, Iowa, where they had shown enough strength to alarm both of the regular parties. Hartford, Arkansas, elected a Socialist mayor, the first to be chosen in that state. In Maine the Democrats carried eleven cities, the Republicans four. In Seattle, Washington, Hiram C. Gill, who was recalled a year before, was beaten narrowly by G. F. Cotterill, who was identified with municipal ownership, the single tax and prohibition. In December George Alexander, "good government" candidate for mayor of Los Angeles, California, was reëlected by a majority of 36,000 over Job Harriman, a Socialist and one of the McNamara counsel. It was said that 70,000 women voted. The successful candidate favored the ownership by the city of many industries and utilities. At the same election an initiative ordinance providing for prohibition was voted down; an ordinance establishing a municipal newspaper was carried.—There are now 194 cities with **commission government.**—Increased public interest in poverty and **unemployment** is shown by the appointment by the city of Chicago in January of a commission to inquire into the causes of unemployment and to suggest remedies; by the establishment in January by the city of Schenectady, New York, of an employment bureau; by the appropriation of $10,000 by the city of Portland, Oregon, in January, to provide work for the unemployed; and by the establishment of a municipal store in Torrington, Connecticut, to supply the poor of the town.—On December 12 Louis Kuehnle, Republican boss in **Atlantic City,** New Jersey, was found guilty of awarding a contract as water commissioner to a man acting as the dummy for a paving company of which he himself was a shareholder. He was sentenced to one year's imprisonment and a fine of $1000. Other grafters were sentenced to terms of three months to a year.—In February two street railways in **Chicago** were fined $800 and $700 respectively for insufficiently heating their cars. The transportation committee of the city council has planned to establish single fares and transfers over all surface and elevated lines.—At the end of April more than five thousand men were at work upon the construction of the new subways in **New York city.** On November 21 William Willett, defeated candidate for the New York supreme court, Joe Cassidy, former borough president of Queens, and Louis T. Walter, his right-hand man, were arrested on the charge of corruptly conspiring to have Willett nominated. The three pleaded not guilty and were released on

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$5000 bail.—In January a temporary agreement was reached between the city of **Toledo** and the street railway, pending franchise negotiations under which there will be three-cent fares for two hours in the morning and evening and for the rest of the day six tickets for twenty-five cents and universal transfers.

THE PRESIDENTIAL CAMPAIGN.—The contest for nominations to the presidency presented novel features: the employment for the first time in a considerable number of states of primary ballots which enabled each voter to express directly his preference for a particular candidate, and the unprecedented extent to which leading candidates (including the president and an ex-president), traveling about the country and delivering speeches, made direct personal appeal to the voters.—The **Republican** National Committee, meeting at Washington on December 12, decided that the National Convention should be held at Chicago on June 18. In the same month Senator LaFollette put himself forward as a candidate for the nomination in opposition to President Taft and, speaking in Ohio and other states, outlined the "progressive" policies. On January 20 Senator Cummins announced his candidacy. Meanwhile friends of Mr. Roosevelt had begun to exert themselves; and after the temporary physical collapse of Senator LaFollette, early in February, the governors of seven states united in urging the ex-president to enter the campaign. This he consented to do, having first set forth a somewhat radical program, which included the short ballot, direct nominations, the initiative and referendum and the recall of judicial decisions. President Taft, speaking at New York on Lincoln's birthday, denounced the Progressives as "political emotionalists and neurotics," who would "hurry us into a condition which would find no parallel except in the French Revolution." Increasing bitterness marked the campaign, culminating late in April in an exchange of personalities between President Taft and Mr. Roosevelt. At the close of this RECORD about three-fourths of the delegates had been chosen; President Taft was in the lead but was not assured of the nomination. The Roosevelt managers claimed that the administration had brought political pressure to bear in the selection of southern delegates, and called attention to the fact that in the nine states where presidential primaries had given the voters a chance to express their choice freely Mr. Roosevelt had secured 216 of the 256 delegates, polling a majority of the primary votes in each of these states except Massachusetts and New Hampshire. It was rumored that some of the southern delegates were inclined to disregard their instructions to support President Taft and would vote for Mr. Roosevelt. Apprehension that the feelings aroused in this struggle would make the election of either of the leading candidates impossible led to the suggestion that Justice Hughes might advantageously be brought forward as a compromise candidate. Mr. Hughes stated that he would not be a candidate against President Taft.—The **Democratic** National Committee met at Washington on January 8 and decided that the National Convention should

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meet at Baltimore on June 25. Late in January Mr. Bryan declared that he would not offer himself as a candidate. In view of his strength with the rank and file of the party, however, his attitude toward the numerous candidates was felt to be important. In a series of speeches delivered in Ohio he declared that Governor Harmon was a "reactionary and the choice of predatory interests," and he stated that he could not as yet determine whether he would prefer Governor Wilson or Speaker Clark. At the close of this RECORD the Democratic candidates who had secured the largest number of delegates were Speaker Clark, Governor Wilson and Congressman Underwood. An understanding appeared to exist between Harmon, Clark and Underwood, under which their interests were to be pooled against those of Wilson. There was a growing impression that Mr. Bryan had not entirely eliminated himself as the possible choice of the convention.

THE TRUST PROBLEM AND THE RAILROADS.—On November 14 the Commerce Court held that the **Interstate Commerce Commission** had exceeded its powers in dividing the country into zones and applying general rates to the zones without making investigations in specific instances (see last RECORD, p. 752). On January 23, on appeal from a decree of the circuit court in Minnesota, enjoining the enforcement of the commission's order which forbade an increase in lumber rates from the Pacific coast to certain points in the Middle West, the Supreme Court upheld in unmistakable terms the commission's power of final decision in all questions of fact entering into the establishment of interstate rates. On April 1 the Supreme Court, again reversing the decision of the Commerce Court, held that the Interstate Commerce Commission might require water lines to report to it regarding intrastate as well as interstate business. In November the commission raised the rate on through shipments from the Atlantic seaboard to Missouri river points from 51 to 55 cents, the increase being justified by the higher operating expenses of the railroads. In March the commission laid down the principle that if a railroad makes a low rate for traffic wholly within a state, even when forced to do so by state law, it must accord the same rate to interstate traffic moving under similar conditions. In April several state governors filed briefs with the Supreme Court upholding the rights of the states in the fixing of intrastate rates.—The Missouri **anti-trust laws** were upheld by the United States Supreme Court on April 1, on appeal from the state's action in ousting the Standard Oil Company and the Republic Oil Company and fining each $50,000.—In obedience to the decree of the Supreme Court (see last RECORD, p. 750) the **Standard Oil Company** passed out of existence on November 30, each subsidiary company assuming control of its own affairs. On January 23 the Standard Oil Company of New York was fined $55,000 by the federal court for accepting railroad rebates.—In April, after the Supreme Court had refused to review the decree of the circuit court providing for the reorganization of the **American Tobacco Company**, a bill was introduced in the Senate

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which would permit the independents to appeal to the Supreme Court. On April 1 the United States district court in New Orleans assessed damages upon the company for conspiracy to destroy competition by one of the independents.—On May 6 hearings in the government's suit for the dissolution of the **United States Steel Corporation** began in New York.—After a trial lasting fifteen weeks the ten accused officers of the so-called **beef trust** were acquitted in Chicago on March 26. The jurors took three ballots, four voting for conviction on the first ballot. The cost of the trial, which was brought under a penal provision of the Sherman Act, was $500,000 for the defendants and $100,000 for the government. In May the government began an inquiry into the alleged perjury of witnesses on behalf of the packers.—On March 2 the United States district court in Boston dismissed four of the five counts in the indictments against officials of the **United Shoe Machinery Company**, *viz.* those charging criminal conspiracy in restraint of trade; the remaining count charged monopoly through a system of leases on patented machinery.—In March several directors and officials of the **American Sugar Refining Company** were brought to trial in New York under the penal provisions of the Sherman Act. On March 31 the jury, failing to agree, was discharged.—On March 11 the Supreme Court sustained the validity of contracts by which the holder of a **patent**, by the terms of restrictive licenses issued with each article sold and requiring the use with it of certain unpatented articles, may establish a form of trust. The decision was made by less than the full court. On April 8 an application for a rehearing was denied.—In December the circuit court in New York decided against the Atlantic **steamship companies** who demurred to the suit brought against them under the Sherman Act. On March 31 the government brought suit in New York to dissolve the alleged steamship pool which controls freight rates between the United States and eastern countries.—On March 23 the federal court in Cleveland found four railroads and four ore-dock companies guilty of rebating and conspiracy to rebate and imposed fines aggregating $123,000.—The New Jersey Public Utility Commission held in December that railroads must furnish individual drinking cups to passengers.—On November 14 the supreme court of Missouri fined the **International Harvester Company** $50,000 and forbade it to do business in the state. On April 11 the federal government brought suit in St. Paul for the dissolution of this company. The petition named seven corporations and eighteen individuals.—On February 24, by a vote of 268 to 8, the House of Representatives ordered an investigation of the alleged **money trust**. The first step was taken on April 27 when more than 30,000 banks were requested to give detailed information regarding all phases of their business and their relations with other institutions.—On January 22 the Supreme Court held that railroads are required to carry liquor into prohibition territories of states other than those from which shipments are made.

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LABOR AND CAPITAL.—Before the selection of the jury in the **McNamara case** had been completed (see last RECORD, p. 753), James B. McNamara confessed on December 1 that he had dynamited the *Times* building, causing the death of twenty-one persons; John J. McNamara, his brother, pleaded guilty to the charge of dynamiting the Llewellyn iron works. Judge Bordwell sentenced the former to life imprisonment, the latter to fifteen years in the penitentiary. The trial had already cost the county $200,000. On December 5 the members of the committee of the American Federation of Labor which had charge of the defence of the brothers passed resolutions condemning them for their crimes. On December 30 nine indictments for complicity in the dynamiting conspiracy were returned in Los Angeles. One of the accused made a partial confession. On January 28 Clarence Darrow, counsel for the defence, was indicted for bribery in Los Angeles. In February fifty-four labor men, officials or former officials of the Association of Bridge and Structural Ironworkers, were arrested in various parts of the country on the charge of conspiracy to transport dynamite from state to state in passenger trains.—On January 2 25,000 operatives in the **cotton mills** of Lawrence, Massachusetts, struck on account of a reduction in wages following the enactment of a state law which limited the hours of labor. On January 15 the militia was ordered out, and from time to time reinforcements had to be sent. There was some loss of life; one of the labor leaders was jailed for alleged complicity in the murder of an Italian woman. In the middle of March the strikers returned to work with the promise of an increase of about seven per cent in wages. Other textile mills in New England were forced to concede increases ranging from five to ten per cent. Shortly afterwards the price of cotton goods advanced a half-cent. Strikes occurred also in Utica, New York, and Passaic, New Jersey, where there was much violence.—The convention of the United **Mine Workers** met in Indianapolis in January. It endorsed the principle of government ownership of all industries and voted to demand an increase of wages both for anthracite and for bituminous miners. The demands of the 400,000 bituminous men were compromised on March 29, a general advance of five cents a ton on screened lump coal and a corresponding advance for day labor being conceded. The anthracite men demanded recognition of the union, a twenty per cent increase in wages and an eight-hour day. The matter was referred to committees of operators and miners. At the close of this RECORD no agreement had been reached. Riots, attended by bloodshed, occurred at Wilkesbarre on May 6.—In February, more than 25,000 engineers employed on fifty Eastern **railroads** demanded wage increases. In April ninety-three per cent voted to strike. Early in May, however, an agreement was made to submit the differences to arbitration.—In order to avert a threatened strike of freight handlers, all the railroads entering Chicago offered on May 3 half the wage increase which had been demanded.—On May 2 pressmen on all the principal Chicago **newspapers** went on strike and were joined by the wagonmen and

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newsboys. The strike arose over the question whether the Pressmen's Union might dictate to the publishers the number of men to be employed on each press in excess of the number stipulated in the agreement between the publishers and the union. On May 4 the stereotypers on four of the newspapers joined the strike. 7000 paper makers at Holyoke, Massachusetts, were granted increases in wages May 6; at the same time advances in the price of paper were announced.—On January 15 the United States Supreme Court upheld the constitutionality of the **Employers' Liability** Act of 1908, declaring that this act superseded all state statutes on the subject and that state courts must assume jurisdiction when redress is sought through them. On November 14 the supreme court of Wisconsin upheld the state liability law.—On December 7 the jury in the case of Isaac Harris and Max Blanck, owners of the Triangle Waist Company, brought in a verdict of not guilty. The accused were charged with manslaughter in connection with a fire in which 147 employees lost their lives (see RECORD of June, 1911, p. 363).

LYNCHING AND THE RACE PROBLEM.—The brutal lynching at **Coatesville**, Pennsylvania (see last RECORD, p. 755), has gone unpunished. After the acquittal of six of the defendants the commonwealth applied unsuccessfully for a change of venue. On May 3 the jury found a verdict of not guilty in the case of a man who had already confessed his complicity to the police; and the commonwealth, seeing the impossibility of securing convictions, requested the acquittal of the remaining five defendants. In dismissing the cases, Judge Butler held that the outcome of the trials was a public calamity.— For alleged **assaults** upon white women negroes were lynched at Tulsa, Oklahoma, on December 3; near Memphis on February 15; and at Shreveport, Louisiana, on April 9. At Spring Hill, Kansas, on November 24, a negro was saved from lynching by the father of the fourteen-years-old girl whom he had assaulted. The presence of soldiers prevented the lyching of five negroes, charged with murder and assault, at Jacksonville, Florida, on March 7.—For acts of **violence** other than assaults upon women negroes were lynched at Mannford, Oklahoma, on December 3 and 5; Washington, Georgia, on December 5; Jackson, Georgia, on December 14; Donaldson, Georgia, on December 23; Brooklyn, Maryland, on December 25; Hamilton, Georgia, on January 22; Shelby, Tennessee, on February 19; Fort Smith, Arkansas, on March 25; Blacksburg, South Carolina, on March 29; and Delhi, Louisiana, on April 25. In the case of the Fort Smith lynching the negro was innocent; as the police made no attempt to defend him, the city council afterwards removed the chief of police and eight patrolmen. On May 2 the grand jury returned twenty-three indictments for participating in the lynching.—Speaking before the alumni of Howard University on April 9, President Taft denounced lynching and said that "the man who pulls the rope should hang by the rope." On January 25 the assistant treasurer of a New York theatre was fined $50 for refusing admission to a negro who had paid for seats (see last RECORD,

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p. 755).—The supreme court of Louisiana held, on January 25, that negro passengers on street cars cannot be ejected from seats in the white section unless there are seats in the negro section.

THE DEPENDENCIES.—In November the annual report of Governor Colton of **Porto Rico** showed an increase of fifteen per cent in the foreign trade, of thirteen per cent in the net revenue, and of $500,000 in the cash balance. This satisfactory condition, together with the increased production of sugar and other staples, he ascribed to the unrestricted commercial relations with the United States. The passage of a free sugar bill, however, by the House of Representatives at Washington in March (see *supra*, p. 357) was popularly regarded as a menace to the new prosperity. Mass-meetings made emphatic protests; and in April the House of Delegates sent a deputation of three to appear before the United States Senate and argue against the bill. In December General Edwards, chief of the Bureau of Insular Affairs, recommended that all properly qualified Porto-Ricans should be admitted to American citizenship; but the House of Delegates on January 17 passed a resolution declaring against American citizenship unless accompanied by full self-government. A delegation was sent to Washington to petition for statehood or independence. A bill granting citizenship passed the United States House of Representatives on March 4. —The **Philippines** legislature adjourned on February 2 without disposing of the appropriation bills and other important matters; the special session called by Governor Forbes was equally fruitless. Late in March a bill was introduced in the United States House of Representatives providing, under certain conditions, for the independence of the islands in 1921; during the intermediate probationary period the government would be in the hands of an insular Congress and of a president appointed by the president of the United States. The plan contemplates the neutralization of the islands and a guarantee of independence. Under an act of Congress of March 23 all residents of the islands who were Spanish subjects in 1899 and their children shall be deemed citizens of the islands and as such entitled to the protection of the United States; and the local legislature is empowered to provide by law for the acquisition of such citizenship by those who do not come within these provisions. The attempt to disarm the natives of Mindanao led to an engagement in December in which 42 Moros were killed. 600 Moros were surrounded on the island of Jolo and forced to capitulate.

III. LATIN AMERICA

MEXICO.—Señor Madero entered upon his office as president on November 7, with the following cabinet: Abraham Gonzalez, minister of interior; José Gonzalez Salas, war; Manuel Calero, foreign relations, Manuel Bonilla, communications and public works; Ernesto Madero; finance; Rafael Hermandez, agriculture; Manuel Vasquez Tagle, justice; and Manuel Diaz Lombardo, public instruction. The new government

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found grave difficulty in restoring order after the flight of General Diaz (see last RECORD, p. 756). In the south Emiliano Zapata continued to hold his ground; while in the north a succession of strikes, riots and mutinies gradually developed into a more or less formidable insurrection. On January 31, the city of Juarez was seized by opponents of the Madero government, and Emilio Vasquez Gomez was proclaimed president. On February 23, General Orozco, military governor of Chihuahua, deserted Señor Madero and accepted the chief military command in behalf of Señor Gomez. The insurgents suffered several reverses in the state of Chihuahua during March and April, but the government was handicapped by lack of adequate forces, by the irregular character of the warfare and by chronic disorder in other parts of the country.

THE WEST INDIES AND CENTRAL AMERICA.—The **Cuban** Senate passed in December a House bill suspending civil service rules for six months in order to permit the removal from office of persons hostile to the administration. The presidential campaign began in April: on the seventh the Conservatives nominated General Juan Mario Menocal, acting secretary of justice; and on the fifteenth the Liberals named Vice-President Alfredo Zayas.—Ramon Càceres, who had been president of **Santo Domingo** since 1906, was assassinated on November 19. A few days later Eladio Victoria was chosen by the Congress as provisional president.—General Manuel Bonilla assumed the presidency of **Honduras** on February 2. In March the rebel leader Villadares invaded the country from San Salvador and captured the town of Aramecina.

SOUTH AMERICA.—Venezuelan forces in December thwarted ex-President Castro's attempt to reënter the country and reëstablish his authority.—Señor Emilio Estrada, who had been elected president of **Ecuador** in the preceding January, died in December. At once a portion of the army proclaimed General Pedro Montero president, but several of the interior provinces refused to recognize him, and on January 18 the government troops, commanded by General Julio Andrade, attacked and defeated the insurgents near Guayaquil. General Montero was killed by a mob a week later, and subsequently General Andrade was assassinated. In March, General Leonidas Plaza was elected president of the republic.—A general strike of the sugar-workers in the Chicama, Cartairo and Baredo valleys of **Peru** was accompanied by violence and disorder. The government sent troops to the disturbed districts in April.—Baron de Rio Branco, **Brazilian** minister for foreign affairs and one of the most influential statesmen in the country, died in February. Election disturbances occurred in the state of Bahia in January, but order was ultimately restored by federal troops.—The revolution in **Paraguay** (see last RECORD, p. 757) proved continuous. Señor Liberato Rojàs, deposed from the presidency in December, restored by force of arms in January and captured by revolutionaries in February, was succeeded by Señor Pedro Pena. On March 22, however, counter-revolutionaries captured Asuncion and obliged President

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Pena and his cabinet to take refuge on foreign warships. Dr. Emilio Gonzalez Navero assumed the provisional presidency on March 25.—The Congress of **Uruguay** definitely sanctioned an insurance-monopoly bill, and in January an insurance bank was set up in Montevideo.—A protracted railway strike affected **Argentina** throughout January and February, and proved a severe test of the government's strength. Excellent order was maintained, however, and a compromise was successfully arranged.—Señor Gutierez, the prime minister of **Chile**, resigned in January on account of ill-health, and Señor Abraham Ovalle took his place. The Senate on April 10 rejected by 10 votes to 9 the government bill providing for the issue to the banks of treasury notes at the rate of one peso paper for 12 pence to the amount of 30,000,000 pesos.

IV. THE BRITISH EMPIRE

THE UNITED KINGDOM.—A special commission, consisting of Prince Arthur of Connaught, the archbishop of Canterbury, the lord chancellor and Lord Morley of Blackburn, represented the **crown** during the absence of King George V on his trip to India from November 11 to February 5.—Opposition in **Parliament** to the government's **Insurance Bill** (see last RECORD, p. 759) developed among the Unionists on the ground of its impracticability; but their amendment was rejected by 320 votes to 223, and the bill passed third reading in the House of Commons with only 21 negative votes. Its passage through the House of Lords was uneventful. Parliament was prorogued on December 16. Measures that received the royal assent were, in addition to the National Insurance Act, a Finance Act, an act consolidating and amending the copyright statutes in order to bring them into conformity with international agreements, a Scottish Land Act, a consolidation and amendment of the Coal Mines Regulation Acts, and an act for securing a universal half-holiday to shopkeepers and shop assistants. The new session of Parliament, which was opened on February 14 by the king in state, promised to become famous by reason of the large number of important measures submitted for consideration. Mr. Asquith announced that Parliament would be asked, among other matters, to enact bills for Irish home rule, Welsh disestablishment, universal manhood suffrage, reform of Indian government, trade unions, and finance.—The development of a **general coal strike** soon required all the government's energies and delayed temporarily their regular legislative program. Labor unrest had been increasing throughout the winter. On December 27, as a result of strikes, Lancashire employers locked out 160,000 weavers, and work was not resumed in their factories until late in January. Meanwhile the miners were agitating for a minimum wage, upon which the Coal Conciliation Boards for the federated districts of Great Britain conferred during December but were unable to agree. The Miners' Federation thereupon ordered a vote of the miners on the question of a national stoppage for the establishment of a minimum wage. The balloting, which began on

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January 12, was largely favorable to a strike, and the federation served notices that employment would be terminated in every district by the end of February. Joint conferences of coalowners' and miners' representatives, the Conciliation Board and the prime minister having failed to effect a compromise, the miners gradually quit work, and so well organized were they that by February 29 it was calculated that 760,800 men were already on strike; two weeks later the number, including those in allied trades, had risen to over one and a half millions. Trade was paralyzed and suffering throughout the country was acute. In this crisis the prime minister brought in a Minimum Wage Bill on March 19 and asked that its enactment be rushed. Mr. Balfour's motion on behalf of the Unionists that the bill be rejected was defeated 348 to 225, and a Laborite amendment, providing for uniform stated minima of 5*s*. a day for adults other than piece-workers and 2*s*. for boys, was negatived 326 to 83. The bill received the royal assent on March 29. The workmen generally accepted the measure, and the strike was formally declared at an end on April 6.—With the settlement of the strike, **Irish home rule** once more became the dominant issue. Already on January 3 the Ulster Unionist Council had passed a resolution repeating the resolve of the Ulster Convention in 1892 to repudiate the authority of the Irish Parliament should it ever be instituted; and on the fifth Sir E. Carson had addressed with fiery words a great Unionist demonstration at Omagh. On the other hand, in behalf of the government, Mr. Winston Churchill invaded Belfast and, although threatened and denied the use of the Ulster hall, addressed a large gathering in the Celtic football field. About 100,000 people attended a home-rule demonstration in Dublin on March 31, at which Mr. Redmond was the principal speaker. Mr. Bonar Law addressed a counter demonstration at Belfast on April 9. On April 11 the long foreshadowed Home Rule Bill was brought in and passed first reading with a majority of 94, one Liberal, Sir Clifford Cory, voting against it and two others abstaining. The bill provides for the creation of a bi-cameral Irish Parliament: a Senate of forty members, nominated each for eight years, at first by the imperial executive and subsequently by the Irish executive; and a lower House of 164 members elected by the existing Irish constituencies; in case of disagreement, the two Houses are to sit and vote together. In addition to reservations on the power of the Irish Parliament included in the bill of 1893, the services of the Irish Land Purchase Acts, of the Old Age Pensions Act and of the Insurance Act are to remain with the Imperial Parliament; and for a certain time other services are reserved, such as the constabulary, postal savings banks, former public loans *etc*. The Irish Parliament may not alter the act except in some subsidiary matters, nor may it abridge the right of appeal to the Privy Council. Special provisions are made for the protection and preservation of religious equality. The executive authority will reside in the lord lieutenant, whose religious qualification is to be removed and who will have the right of veto, and in a council responsible to the

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Irish Parliament. The collection of all taxes other than the duties of the post office is to be imperial, and their produce is to be paid into the imperial exchequer; then, every year, there will be transferred from the imperial to the Irish exchequer the estimated contribution of Ireland. To set up the new administration, $2,500,000 a year will be given outright by the Imperial exchequer, to be reduced eventually to $1,000,000. The Irish Parliament will have power to impose special Irish taxes, whereby the transferred sum will be correspondingly increased. The number of Irish representatives at Westminster is reduced by a special provision of the bill to 42, several boroughs and counties being merged and the universities being deprived of representation. The bill was enthusiastically endorsed by the Nationalist Convention in Dublin on April 23.—**The Welsh Disestablishment** Bill was introduced into the Commons by Mr. McKenna on April 23. It followed in general outline the provisions of the bill of 1909 but conceded greater financial aids to the disestablished church.—Mr. Lloyd George's **budget** statement on April 2 showed a realized surplus of $32,500,000, the largest on record.—Militant **woman suffragists** did much damage in February and March by breaking windows in various parts of London, and many arrests were made. On March 5, the police raided the headquarters of the Women's Social and Political Union and held the leaders, including Mrs. Pankhurst, on a charge of conspiracy. In 76 cases tried in police courts during the first two weeks of March, hard labor for from four to six months was imposed. A Conciliation Bill, which proposed to confer the parliamentary franchise on women who are inhabitant occupiers of separately-rated dwellings, women not to be disqualified by marriage but husband and wife not to be permitted both to vote in the same constituency, was rejected on March 28 by 222 votes to 208. In favor of the measure, including Mr. Birrell and Sir Edward Grey, were 117 Liberals, 63 Unionists, 25 Laborites and 3 Nationalists; opposed to it, including Mr. Asquith and Mr. Churchill, were 73 Liberals, 114 Unionists and 35 Nationalists.—Mr. Balfour resigned his leadership of the **Unionist party** in November and was succeeded by Mr. Bonar Law. At the annual conference of the party at Leeds on November 16, resolutions were passed condemning Irish home rule and pledging the repeal of the Parliament Act.—Several rearrangements occurred in the **cabinet.** Late in October Earl Carrington became lord privy seal; Mr. McKenna, home secretary; Mr. Winston Churchill, first lord of the admiralty; Mr. Runciman, president of the board of agriculture; and Mr. Pease, president of the board of education. In February Earl Carrington was made a marquess, and Lord Crewe succeeded him as lord privy seal. Mr. McKinnon Wood succeeded Lord Pentland as secretary for Scotland.

CANADA.—Deferred elections fixed Mr. Borden's majority in the Commons at forty-eight. The twelfth **Parliament** of the Dominion was opened on November 16 by the duke of Connaught, who announced for the government that negotiations were in progress for improved trade

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arrangements with the British West Indies and Guiana, and that bills would be presented for the creation of a tariff commission, for the improvement of highways and for the encouragement of agriculture. It was generally believed that the Laurier Naval Act would be repealed and a new policy would be submitted to referendum. An important measure was presented on February 27: to extend the province of Manitoba northward to Hudson Bay and to give Ungava to Quebec, Ontario being allowed by private arrangement to extend its provincial railway to Nelson River or Churchill, where Manitoba would provide terminal facilities and permanent freedom from taxation. By the bill, Manitoba would receive an annual federal subsidy of $1,349,346 as compared with $833,000 under the old arrangement.—Mr. Borden, in taking the stand that the Quebec Catholic school system should not be extended to the new territory, incurred the special displeasure of the Catholics and the open opposition of his Nationalist allies. The widening breach between Conservatives and Nationalists, over the school question and over the application of the papal *Ne temere* decree, was cheering to the Liberal majority in the Senate and to all the followers of Mr. Laurier. In the famous Hebert case, in which was involved the authority of the *Ne temere* decree in Quebec, Judge Charbonneau handed down, on February 22, a decision which in effect declared that the canon law of the Catholic church of Quebec is not binding on the state.—Appropriations made in March included $1,000,000 for a Canadian building in London, $1,500,000 for Hudson Bay railway terminals and elevators, $200,000 for the Welland Ship Canal construction, and $105,000 for a steamship service between Canada and the West Indies and South America.—A trade agreement between Canada and the West Indies, to go into effect on January 1, 1913, was signed on April 9.

AUSTRALIA.—The budget of the Commonwealth balanced estimated receipts and expenditures at $100,000,000. The total outlay for national defence was placed at $22,500,000.—Before the Interstate Labor Conference on January 8, Mr. Fisher, the prime minister, declared that there were too many hobbled parliaments in Australia and that the powers of the federal government should be enlarged.—The program of the **Labor party**, as revised at Hobart on January 16, provided: (1) maintenance of a "white" Australia; (2) maintenance of a land tax; (3) effective federation by inclusion of referendum proposals in the constitution; (4) new protection; (5) nationalization of monopolies; (6) Arbitration Act amendments; (7) a navigation act; (8) Commonwealth freight and passenger steamers; (9) restriction of public borrowing; (10) general insurance; and (11) establishment of sugar refineries.—A general strike in Brisbane during January and February caused considerable trouble.—Mr. Fisher predicted in February that there would be a defence agreement with New Zealand in five years and that within twenty years the Dominion would join the Commonwealth.

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NEW ZEALAND.—The general **elections** in December were far from satisfactory to any party. The government and the opposition were matched with 37 representatives each, while four Laborites and two Independents held the balance of power. The figures on the prohibition referendum were likewise close: on local option, for continuance 237,025, no-license 234,656, informal 13,329; on national prohibition, against 205,661, for 259,943, informal 19,345.—The governor's speech at the opening of **Parliament** on February 16 proposed an increased and graduated land tax; nationalization of the iron industry and possibly of oil fields; free education from primary school to university; reduction of the old-age pension limit from 65 years to 55 for widows and to 60 for other women; reduced railway fares for children; and reduced duties on tobacco and many articles commonly used by small farmers and workers.—On February 27 Mr. Massey, the opposition leader, moved a "no confidence" vote, which resulted in a tie, the speaker giving his casting vote for the government. Three of the four Laborites voted with the Liberals.—The premier, Sir Joseph Ward, was unwilling to carry on his work with such slender support; he accordingly resigned, and on March 28 Mr. Thomas McKenzie, minister for industries and commerce, assumed the premiership and reconstructed the cabinet.—A serious street railway strike in Wellington was compromised in February through Sir Joseph Ward's mediation.

SOUTH AFRICA.—The new session of the **Union Parliament** was opened on January 26 by Lord Gladstone. The speech from the throne foreshadowed defence legislation, customs revision bills regulating the public and railway services, and measures dealing with land settlement, irrigation, the establishment of a union land bank, the extension of railways, the development of agriculture, the establishment of a national university and immigration. The estimated expenditures of the Union for 1912–13, exclusive of those for railways and harbors, showed a total of over $80,000,000, carrying a decrease for agriculture and increases for education and defence. In submitting the railway estimates on March 25, Mr. J. W. Sauer, the minister in charge, stated that 504 miles of railway had been added to the Union system in 1911 and that a further extension of 775 miles would be completed during 1912–13. The total estimated revenue from the railways was about $60,000,000, a surplus of slightly over $5,000,000.—**Party congresses** were held in November. The Unionists at Durban, under the presidency of Sir Thomas Smartt, advocated large increases in naval contributions and compulsory military training. The Nationalists at Bloemfontein, led by Generals Botha and Hertzog, changed the name of their party to the South African party. The Bond Congress opened at Cape Town on December 7 and agreed, with but one dissentient, to dissolve and to join the new South African party.

INDIA.—George V, the emperor-king, with his royal suite, landed at Bombay on December 2. On the seventh, he made a triumphal entry into Delhi, the ancient capital; on the twelfth, he was crowned with great cere-

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mony at the **durbar**; on the fourteenth, he reviewed the Indian army. After ten days occupied in hunting and in visiting several of the native princes, he sailed from Calcutta for England on January 8.—An imperial proclamation, issued at the durbar, announced **administrative changes**: the transfer of the seat of government of India from Calcutta to Delhi; the province of Bengal, reconstructed on a new basis, to have the status of a presidency; the establishment of a new lieutenant-governorship for the provinces of Behar, Chota Nagpur and Orissa; the creation of a new commissionership for Assam; and the consequent disappearance of Eastern Bengal and Assam as a separate lieutenant-governorship. The proposed transfer of the capital was not well received in Calcutta or throughout Bengal; the Moslems were particularly hostile to the change.—Resolutions were adopted at the **Indian National Congress**, held in Calcutta in December, petitioning for the removal from the statute-book of the Seditious Meetings and Press Acts and commending preferential treatment of Indian goods, the extension of the elective elements in local bodies, abolition of the excise duties, better sanitation and retrenchment in the public expenditure.—Sir Guy Fleetwood presented to the viceroy's Council in March what he called a no-change **budget**. He said the prospects were excellent, but no remission of taxes was justified. He estimated that revenue and expenditure should balance at $390,000,000.—The High Court delivered judgment on April 2 in the appeal of Pulin Behari Das and 34 others against their conviction and the sentences imposed in the celebrated **Dacca conspiracy case** (see last RECORD, p. 762). Fourteen of the convictions were upheld, but the sentences were reduced, that of Pulin Behari Das to seven years; the remainder of the prisoners were acquitted.—Among royal favors granted at the durbar was one making officers and men of the Indian army henceforth eligible for the Victoria Cross.—The **census returns**, published in November, showed a total population in the empire of 315,132,537. The census of the French settlements in India, which was carried on synchronously with the British, returned 282,379, while that of the Portuguese, taken in December, 1910, reported 604,930.

OTHER DEPENDENCIES.—A serious street railway strike occurred in Kingston, **Jamaica**, in February and March. There was much rioting, and on one occasion the governor was stoned.—Sir Walter Egerton, governor of Southern **Nigeria**, was transferred to British **Guiana**, and the Colonial Office in London announced that the governments of Southern and Northern Nigeria would be amalgamated.

V. CONTINENTAL EUROPE

FRANCE.—Public attention was centered for several months upon the **Franco-German treaties** relative to Morocco and the Congo (see *supra*, pp. 351, 352). The Chamber ratified the agreement on December 20 by 393 votes to 36; but disclosures brought out by a senatorial committee that the premier, M. Caillaux, had treated with Germany independently of M. de

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Selves, the foreign minister, created dissensions in the cabinet. On January 9 M. de Selves resigned, and on the following day M. Caillaux, unable to reconstruct the ministry, retired from office. A **new cabinet** was thereupon formed, which the press pronounced especially strong: M. Raymond Poincaré, premier and minister of foreign affairs; M. Aristide Briand, justice; M. Léon Bourgeois, labor; M. Alexandre Millerand, war; M. Theophile Delcassé, marine; M. L. L. Klotz, finance; M. Jules Steeg, interior; M. Jean Dupuy, public works; M. Jules Pams, agriculture; M. Le Brun, colonies; M. Giusthau, public instruction; and M. Fernand David, commerce. The Senate ratified the German agreement on February 10 by 212 votes to 42, M. Clemenceau and General Mercier voting with the minority. —Other measures which had been successfully carried through during 1911 were the new commercial treaty with Japan, the Messageries Maritimes subsidy bill, and bills for prolonging the Charter Bank of France and the Bank of Algeria. The Workmen's Pensions Law of 1910 was amended by reducing the pension age and by increasing the state grant. Electoral reform proposals did not get beyond the stage of pious resolution.—The returns of the **senatorial elections** on January 7 redistributed the hundred seats as follows: Conservatives 5, Progressists 23, Democrats 20, Radicals and Socialist-Radicals 48 and Socialists 4. These results made little change in the relative strength of the groups: the Radicals lost four seats to the Moderates, but gained a valuable recruit in M. Camille Pelletan, the new senator for Marseilles.—The new **parliamentary** session was opened on January 8. A running debate on Morocco was kept up in the Chamber until March 22, when a vote of confidence in the government was carried by a majority of 332, and a resolution was adopted for the appointment of a commission of inquiry into M. Caillaux's policy. The naval bill, carrying a program of construction by 1920 of a battle fleet of 28 ships and appropriations of $300,000,000 was passed on February 12 by 452 votes to 53. On February 27, the Chamber of Deputies by 541 votes to 76 finally adopted the budget for 1912 in the form in which it had passed the Senate. The budget estimates for 1913, submitted in April, contemplated the unprecedented expenditure of $932,933,000. On March 30 the Chamber adopted by 453 votes to 59 a bill extending to all categories of miners and slate quarrymen the benefits of the act of 1905 instituting an eight-hour day for certain classes of underground workers.—Deputations of **women suffragists** visited Parliament on various occasions, demanding the ballot. The movement did not seem to have the strength in France or even in Paris that it manifested in Great Britain.—The quinquennial **census returns**, published on January 10, gave France a total population of 39,601,509, an increase since 1906 of 349,264. The most noteworthy feature of the returns was that the increase of the urban population was greater than the total national increase. In 64 out of 87 departments the population had decreased. The population of Paris was given as 2,888,110, an increase of 124,717. The towns next in size were Marseilles with 550,619 and Lyons with 523,796.

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GERMANY.—The general feeling that Germany had been the loser in the **Moroccan agreement** (see *supra*, pp. 351, 352) brought about the resignation in November of Herr von Lindequist, the colonial secretary, and Herr von Danckelmann, the permanent official in the colonial office, and a very lively debate in the Reichstag, where practically all parties save the Conservative expressed the desire that in future the consent of the Reichstag should be a necessary condition of territorial changes. The crown prince, who attended the debate, evidenced strong dislike of the chancellor's policy. Herr von Bethmann-Hollweg held his ground, however, and received the approbation of the emperor.—The **general election** in January was noteworthy for the unexampled success of the Socialists, the crushing defeat of Liberalism and the maintenance of the position of the Clerical Center party. The resulting party distribution in the Reichstag was as follows: Socialists 110, National Liberals 44, Radicals 41, Centrists 88, Poles 18, Alsace-Lorrainers 9, Hanoverians 5, Conservatives 45, Free Conservatives 13. Anti-Semites 11 and Independents 11. The popular vote was even more impressive: Socialists 4,238,919, a gain since 1907 of 979,899; Center 2,012,990, a loss of 166,753; National Liberals 1,671,297, an increase of 34,249; Radicals 1,556,549, a gain of 322,614; and the combined Conservatives 1,515,003.—The new **Reichstag** was opened on February 7. Two days later, after numerous divisions, Dr. Spahn, the Centrist leader, was elected president; Herr Scheidemann, Socialist, first vice-president; and Herr Paasche, National Liberal, second vice-president. On February 13 Dr. Spahn and Herr Paasche resigned and were succeeded, after another week of quarreling and manœuvring, by Herr Kämpf and Herr Dove respectively, both Radicals.—The imperial estimates for 1912, which were published in February, showed slight change from those for 1911.—The Reichstag passed a bill in March giving effect in the empire to the international agreement with regard to the "white slave" traffic. In April, a bitter debate on dueling in the army caused a temporary alliance between the Centrists and the Socialists.—A *Wehrverein*, or **National Defence League**, was formally constituted in Berlin on January 28 under the leadership of General Keim, with the expressed purpose of promoting the interests of the army somewhat as the Navy League had promoted the development of the navy.—The annual report of the Navy League, issued in April, showed a total membership of 1,054,404, an increase within a year of nearly 20,000, although the number of local branches showed a decrease of 30.—Several important changes occurred in **colonial** governorships. Dr. Gleim, who since 1910 had been governor of the Cameroons, retired in January for reasons of health and was succeeded by Herr Karl Ebermaier of the Colonial Office. In April, Dr. Schnee was appointed governor of East Africa, being succeeded at the Colonial Office by Dr. Gleim; and Duke Adolphus Frederick of Mecklenburg was named governor of Togo.—The **Prussian** budget, presented in January, balanced revenue and expenditure but showed an increase within the year of over $50,000,000.

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The Prussian minister of the interior stated in February that the government did not intend to introduce a franchise reform bill during 1912. —At the elections to the lower house of the **Bavarian** Diet in February, the Clerical Center majority of 33 was reduced to 11, though the majority of Centrists and Conservatives together amounted to 22. The Liberal-Socialist *bloc* won 20 seats. Baron von Hertling, in forming a new Clerical ministry, announced that he accepted the theories of parliamentary government and ministerial responsibility. This meant that, for the first time in the history of the German Empire, the most important state after Prussia would represent in the Bundesrath the views of a party government.—The **Mecklenburg** Diet adopted in November a measure imposing a tax on bachelors: on reaching 30 years of age they are to pay taxes at a rate of 25 per cent more than is exacted of married men, unless they are under legal obligation to provide for relatives.

AUSTRIA-HUNGARY.—Count Aehrenthal, the minister of foreign affairs for the **Dual Monarchy**, died in Vienna on February 17. The emperor-king appointed as his successor Count Leopold Berchtold, formerly ambassador to St. Petersburg and a Hungarian citizen. The deadlock in the relations between Austria and Hungary, especially as regarded military affairs, continued to threaten the monarchy with very serious consequences; and late in March the venerable Emperor Francis Joseph, in an audience with the Hungarian premier, Count Khuen Hedervary, threatened to abdicate if it were not ended.—In **Austria**, the new finance minister, Herr von Zaleski, drew the attention of the Chamber in December to the fact that during the last decade the national debt had grown at the rate of nearly $200,000 a day, inclusive of the cost of railway nationalization. A canal construction bill contemplated a further unexpected outlay of nearly $90,000,000.—In **Hungary**, the determination of the government, backed up by strong public opinion, to control effectively the Hungarian contingent of the dual army, precipitated a crisis with the king, and early in March the resignation of Count Khuen Hedervary and his cabinet was announced. The natural successor was Dr. de Lukacs, whose advocacy of universal suffrage, however, would be sure to bring him into conflict with the whole aristocracy and gentry, with the House of Magnates, and particularly with Counts Andrassy and Apponyi and M. Kossuth. The monarch declined at first to accept the resignation of the premier, but after protracted and fruitless negotiations he at last in April called in Dr. de Lukacs, who had prepared a program acceptable to the Justh group.—Following the arrest of an opposition deputy, whom the **Croatian** government caused to be condemned to three months' imprisonment on a charge of forgery, anti-Hungarian feeling rose high throughout the southern Slav provinces, and on February 26 and 27 noisy and violent demonstrations occurred at Agram. In order to cope with the increasing anti-Hungarian agitation, the new ban, M. Cuvaj, was appointed royal commissioner with dictatorial powers for the kingdoms of Croatia and Slavonia. By proclamation, the

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royal commissioner stopped all activity of the autonomous legislative body and interrupted all preliminaries for the Diet elections. He further issued ordinances placing restrictions on the press and provisionally suspended the right of free assembly. A meeting of Czech parties, held at Prague on April 8, expressed full sympathy with the Serbo-Croatian people and declared that the national struggle would lead to the establishment of an independent Czech kingdom in the north and to an absolutely independent Croatia in the south of the Dual Monarchy.

Italy,—Parliament was to have reassembled in November, but the summons was postponed owing to the war (see *supra*, p. 351). It met on February 22, and proceeded to make special grants in order to prosecute hostilities against the Turks. A bill providing for the annexation of Tripoli and Cyrenaica passed the Chamber on February 23 and the Senate on the following day. The most important measure pending before Parliament, not connected with the war, was a bill to establish universal manhood suffrage. It was reported that the proposal was meeting with quite as much favor among the Clericals as in Radical circles.—The attempted assassination on March 14 of King Victor Emmanuel III by an anarchist named Dalba brought forth many evidences of popular loyalty and affection.—The court conducting the famous **Camorra trials** at Viterbo released in February several prisoners who had been in prison five years, that being the maximum term for criminal association, the offence with which they were charged.

RUSSIA.—The ministry introduced a bill in the **Duma** in November for the establishment of *zemstva* in the governments of Astrakan, Orenburg and Stavropol. At the same time an appropriation of $45,000,000 was made for distribution in eighteen governments in East Russia and Siberia on account of the failure of the harvests. In December the Duma adopted the government measure for the purchase by the state of the Russian portion of the Warsaw-Vienna railway, a sum of $16,100,000 being assigned for the purpose. The only objection raised came from the Poles and a few Social Democrats. Late in January the Nationalists introduced a bill prohibiting the admission to Russia of Jewish citizens of the United States and also imposing certain special tariff duties against goods and ships of the United States. The third consecutive budget without a deficit was presented to the Duma on March 12; the surplus amounted to over $50,000,000. Bitter criticism of the affairs of the orthodox church was heard from all parties in the Duma during the debate on the estimates for the Holy Synod. Denunciation of bureaucratic control of ecclesiastical matters evoked general approval.—Keels of the three Black Sea dreadnoughts provided by the special **naval** program of 1911 were laid down at Nikolaieff in November by Admiral Grigorovitch, minister of marine.—The tsar in January granted a pension of $5,000 a year to the widow of the late Count Leo Tolstoi.—Colonel Kuliabko, who was head of the secret police at the time of M. Stolypin's assassination, was arrested at Kieff in

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February in connection with the alleged embezzlement of secret service funds.—On November 10 the Duma by large majorities approved bills for a gradual increase of **Finland's** annual military contribution up to $5,000,000 and for equalizing the rights of Russians and Finns in the grand duchy.—M. Stolypin's ultra-nationalistic bill providing for the creation of a province of Kholm, which excited the most intense bitterness among the **Poles**, was radically amended in the Duma in the interest of conciliation. By 150 votes to 105 the House threw out the clause under which the districts composing the new province were to cease to form part of the kingdom of Poland.—During a debate in the Council of the Empire on March 20, on a bill for the reform of the judicial administration, a motion was brought forward by fifteen members urging that **Jews** should not be eligible for appointment as justices of the peace. The minister of justice supported the motion, which was finally adopted.—After proceedings lasting two months, the Senate gave judgment on April 2 in the case of the **Armenians** belonging to the secret society called Dashnaksiutiun, who were charged with having sought to procure a violent political revolution by an armed rising, the ultimate aim of the society, as was alleged, being to establish a Caucasian federated republic. Of the 146 prisoners 94 were acquitted; 4 were sentenced to terms of penal servitude varying from four to six years; 26, including a priest, to exile; 21 to terms of fortress imprisonment, ranging from three months to two years; and one to imprisonment for three years.

SPAIN.—The constitutional guarantees, which had been suspended during the strike riots of September (see last RECORD, p. 766), were reestablished in November.—A surprising reversal of the results of 1909 appeared in the **municipal elections** in November, when only 414 Republican councillors were elected to 2567 Monarchists. In Madrid, lately divided evenly, the Monarchists secured a majority of six; at Saragossa a Monarchist majority was returned for the first time in twenty years; and at Barcelona, Señor Lerroux constituted a minority of one.—A **cabinet** crisis was narrowly averted in January. The ministry recommended that royal clemency should be exercised in the case of six of the seven Cullera prisoners who had been condemned to death by the supreme council of war, but the king proceeded to pardon all seven. Señor Canalejas at once presented his resignation, but was finally prevailed upon to retain his portfolio.—The new Spanish dreadnought "España" was successfully launched by Queen Victoria at Ferrol on February 5.

PORTUGAL.—It became evident in the autumn that the Republicans were disintegrating into several factions: a Radical group under Dr. Costa, smaller groups under Dr. Almeida and Dr. Camacho, and a group of Independents. In November Dr. Costa forced the resignation of the *bloc* ministry and secured the formation of a cabinet under his influence. The **new cabinet** consisted of Senhor Vasconcellos, premier and minister of foreign affairs; Senhor Falcao, interior; Senhor Paes, finance; and Senhor Macieira, justice. The new premier declared that, in addition to seeking

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to conciliate the other republican groups, he would promote educational reform and a general anti-clerical policy.—The first **budget** of the republic, which was presented on December 19, estimated the total revenue at $82,500,000 and the deficit at $2,175,000. The total indebtedness of the country was placed at $955,000,000.—In view of the pope's hostility to the law for the separation of **church and state**, a deputy presented to the Chamber in December a proposal to abolish the Portuguese legation at the Vatican, but the measure was rejected. Meanwhile, the government was taking energetic measures to punish the Portuguese hierarchy for their refusal to accept the separation law. In January the patriarch of Lisbon and the bishop coadjutor of Coimbra were expelled from their sees. In February the archbishops of Braga and Portalegre and the bishop of Lamego were expelled for two years. By April 1 only two bishops had failed to incur the displeasure of the republican government. A number of the poorer clergy at first accepted the stipends offered by the state, but in consequence of the stubborn attitude of their colleagues most of them eventually refused state aid. Many complaints were spread concerning the unsanitary character of the Portuguese prisons, where hundreds of priests and other political prisoners were incarcerated. On March 5 Senhor Almeida, the leader of the Conservative Republicans, proposed in the House that a general **amnesty** should be accorded to the individuals who had taken part in the recent strikes, as well as to political prisoners, and to all the Royalists under the command of Captain Couceiro, with the exception of the recognized leaders. The premier declared such an amnesty inopportune, and the proposal was negatived, 63 votes to 26.—Unrest and disorders were reported during February and March from several Portuguese **colonies**, especially from Macao, from Satary in India and from Portuguese Guinea. In the Chamber of Deputies, on March 15, the prime minister denied categorically that there was any treaty between Great Britain and Germany containing any clause which could threaten the independence or integrity of Portugal or the interests of any part of its possessions.

TURKEY.—Second only to the Tripolitan War (see *supra*, p. 351) in interest was the campaign in preparation for the forthcoming **general elections**. For several months the dominant Committee of Union and Progress was supposed to be losing ground. There were divisions within the committee (see last RECORD, p. 768). There was dissatisfaction about the war. The committee was blamed for disorders in Macedonia and Albania and for murders of Greek ecclesiastics. Finally, a new political group, known as the "Union and Liberty" party, appeared in the field in December as a rival organization, proposing to extend the powers of the provincial councils and to guarantee to the non-Moslem communities all privileges accorded them by imperial iradés. The failure of inter-party negotiations and the consequent inability of the ministry to control a majority in the Chamber led on December 30 to the resignation of Said Pasha and his colleagues.

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On January 3 the grand vizier managed to reconstruct his **cabinet**, placing Memduh Bey in charge of justice and the interior; Emrullah Effendi, of education; Sinipian Effendi, of public works; and Aristidi Pasha, of mines and forests.—It was reported in February that the "Ulema Committee," with its strong Musulman following, was coöperating with the "Entente Liberale," a federation of Greek and Bulgarian organizations, against the Committee of Union and Progress.—By March several circumstances had helped to strengthen once more the Union and Progress party; among these were the unexpectedly prolonged and stubborn resistance of the Turco-Arab forces in Tripoli and Cyrenaica, the extension of the area of hostilities by the Italians and the failure of the opposition, especially of the Union and Liberty party, to create any efficient organization or to agree upon details.—Sir Richard Crawford was appointed in December financial and economic adviser to the Ottoman government.—In February the central government conferred upon the governors of Bitlis and Erzerum extraordinary powers for the introduction of reforms and the maintenance of order. The work of laying the rails for the section of the Baghdad Railway eastward of Aleppo began on February 10.—Stormy scenes in the **Cretan** Assembly on March 13 ended in the practical deposition of the executive government and the military occupation of its offices. The crisis ended on the fifteenth, when the Assembly elected a permanent commission of 81 members, from whom five, selected from the various parties, were to form an executive body holding office in rotation for one month. Several Moslems were murdered by mobs in March and April. (For the resulting international complications, see *supra*, p. 353.)—Kopassis Effendi, the prince-governor of **Samos**, was assassinated in March by a Greek.

OTHER EUROPEAN STATES.—The **Norwegian** government proposed in January the reorganization of the country's naval defences, with special provision for 7 armored coast-defence vessels, 6 torpedo-boat destroyers, 40 torpedo boats, 12 submarines and 4 gunboats. M. Konow's ministry resigned on February 16, and was succeeded by one formed by General J. K. M. Bratlie.—The elections for the **Swedish** Upper House, held in December, returned 87 Conservatives, 51 Liberals and 12 Socialists, as compared with 116 Conservatives, 30 Liberals and 4 Socialists in the previous House. A government bill was introduced on April 2 giving women the parliamentary franchise and the right to stand for election upon the same conditions under which these rights are exercized by men. The bill contained a provision that married women whose husbands had paid no taxes for three years should not be entitled to vote.—Following the death of the grand duke of **Luxemburg**, his daughter, Marie Adelaide, was proclaimed grand duchess on February 25.—The successful candidates at the **Swiss** National Council elections, held late in October, included 35 Catholic Conservatives, 10 Socialists, 10 Centre Liberals, 7 members of the Social Political party and 107 Radicals. On December 14, Louis Forrer, vice-president of the Federal Council, was elected president of the Confede-

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ration. The referendum on the Sickness and Accident Insurance Bill (see last RECORD, p. 770) was carried on February 4 for the government by 285,037 to 238,694. The campaign had lasted two months, and seldom had a measure submitted to referendum excited such keen interest.—The **Greek** budget for 1912 showed an estimated income of $30,000,000. The realized surplus of two millions from the year 1910–11 was to be used for public improvements, particularly at the port of the Piræus. The elections to the new Chamber in March gave M. Venezelos an overwhelming majority: of the 181 deputies, 147 were his supporters. The celebration of the anniversary of the declaration of Greek independence took place with great éclat on April 8.—The attainment by Crown Prince Boris of his majority was celebrated at Sofia, **Bulgaria**, on February 2.—The **Servian** cabinet resigned in February because the king refused to dissolve the Skupshtina. M. Stoynovitch, the leader of the Young Radicals, formed a new ministry with the coöperation of the Old Radical Party. —M. Carp, the **Roumanian** premier, whose position had long been insecure owing to the determined hostility of the opposition to the alleged unconstitutional methods of the Conservative government, tendered his resignation on April 10. M. Titu Maiorescu succeeded him as premier, retaining the portfolio of foreign affairs. M. Theodor Rosetti became minister of finance, General Argentojann minister of war and M. Emil Pangrati minister of public works.

VI. ASIA AND AFRICA

CHINA.—The **revolt** against the Manchu government (see last RECORD, pp. 770, 771) continued to make headway, until early in December the republicans were able to occupy the walled city of Nanking. There a Provisional Assembly met and on the twenty-ninth elected Dr. Sun Yat Sen to be "president of the provisional government of the United Provinces of China." Meanwhile the ancient power of the Manchu dynasty seemed to collapse, and the only important issue was between those who advocated the retention of a monarchy under a modernized constitution and those who favored the establishment of a republic. Yuan Shih Kai, premier and supreme leader of the imperial army, early in December arranged an armistice with General Li Yuan Heng, commander-in-chief of the revolutionary forces. The peace conference began at Shanghai on December 18. In January the premier, convinced that no other course was open, extorted from the Manchu princes the agreement to submit to the vote of a National Convention properly chosen the question of China's future form of government. This was tantamount to a recognition of the **republic**; and on February 4 the dowager empress signed a decree in behalf of the Emperor Pu Yi, directing the premier to coöperate with the republicans at Nanking in establishing a new form of government. Yuan Shih Kai was able to secure a grant to the imperial family of an annual pension of $2,400,000; and on February 12 Pu Yi formally abdicated. On the fifteenth Yuan

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Shih Kai was elected president, and on February 20 General Li Yuan Heng was chosen vice-president.—A serious **mutiny** of troops in Pekin, in which it was reported that five thousand persons were killed, seemed to portend difficult times for the new government. The arrival of foreign troops on March 4 assisted, however, in the restoration of order.—Yuan Shih Kai was inaugurated president at Pekin on March 10 and the next day proclaimed a general amnesty. Dr. Sun Yat Sen appealed to the Chinese people to support the new régime loyally.—A republican **cabinet** was constituted as follows: Tang Shao Yi, premier; Lu Cheng Hsiang, foreign affairs; Hsiung Hsi Ling, finance; Liu Kwan Hsung, navy; Tuan Chi Jui, army; Wang Chun Hui, justice; Liang Ju Hao, communications; Cheu Chi Mei, commerce; Cheo Ping Chun, interior; Tsai Yuan Pie, education; and Sung Chiao Fen, agriculture.—The General Assembly on March 20 granted to **women** the right to vote, provided they were able to read and write and held property.—The most serious problems facing the new government in April were the preservation of peace and order, the negotiation of a sufficient loan, the retention of the whole empire and conciliation of recent enemies.

JAPAN.—An imperial rescript was issued in December, appointing an extraordinary commission, consisting of the vice-ministers, presided over by the premier, Marquis Saionji, to investigate the administrative organization of the country with a view to effecting economies.—The **naval** program of the cabinet, as submitted in December, involved an expenditure of $46,250,000 for the construction of a battleship and three armored cruisers of the super-dreadnought class, the expenditure to be distributed as follows: in 1912, $1,250,000, to be obtained from departmental economies; in 1913, $5,000,000; in 1914, $5,000,000; in 1915, $10,000,000; in 1916, $22,500,000; and in 1917, $2,500,000. The keels of four battleships were to be laid down in 1912 and the two following years. On February 3, Baron Saito, minister of marine, declared that the irreducible minimum of naval expansion was eight battleships of the super-dreadnought class and eight armored cruisers of the same class, which must be completed by 1930, construction being begun in 1913.—The death of Baron Ishimoto, minister of war, was announced in April.—The **Diet** was dissolved on March 25, and the elections set for May.—A number of arrests were made in February in connection with a plot to assassinate Count Terauchi, governor-general of **Korea**. Several native Christians were implicated.

SIAM.—A grave conspiracy was discovered at Bangkok in March. Officers of the army and navy had planned to bring about a general mutiny and to overthrow the government. Many arrests were made.

PERSIA.—**Disorder** continued throughout the country, heightened no doubt by the Russian interference and the expulsion of Mr. Shuster (see *supra*, p. 353). The expedition of the ex-shah, Mohammed Ali, failed to regain him his throne. On March 11 he embarked for Petrovsk, on the west coast of the Caspian, whence he proceed to Odessa to rejoin his family.

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His army was being paid off in April out of the annuity of about $60,000 provided by the Teheran government.

LIBERIA.—Daniel Howard was duly inaugurated on January 1 as president of the republic, succeeding President Barclay, who for eight years had administered the affairs of the country. The president, in his address, made special reference to the present political situation of Liberia and the attitude of the great powers, and was happy to say that the uncertainty of the past had given way to a condition of positive assurance that Liberia's integrity would remain intact. He expressed satisfaction that the protracted negotiations in connection with the finances of the country had been brought to a conclusion, owing to the sympathetic interest displayed by the United States, Great Britain and the other prominent powers.

EGYPT.—In his speech at the opening of the **General Assembly** on March 25, the khedive alluded to various measures undertaken and to be undertaken for the amelioration of the country. Among the former were the extension of education; improved irrigation, including the work of raising the Assuan dam, which is nearing completion; and the drainage of lower Egypt. In referring to the creation of a Department of Agriculture, he stated that the solicitude of the government was directed above all to the improvement of cotton cultivation and to the protection of the harvest against diseases affecting the cotton plant; measures were to be taken also to protect the interests of small cultivators and to extend the postal-savings bank to the rural districts. Finally, the khedive announced that, as in the Legislative Council, members of the General Assembly would henceforth be granted the right to question ministers; the improvement of the representative system was under consideration, but prudence and circumspection were necessary.—On March 31, five members brought forward motions demanding the grant of a constitution to the Egyptian people and the establishment of a parliament. The motions were neither rejected nor approved.—Saad Pasha Zagloul, the minister of justice, resigned on April 1.

[For colonies and dependencies in Asia and Africa, see the United States, the British Empire and the Continental European states, *supra.*]

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